

United States  
Circuit Court of Appeals  
For the Ninth Circuit.

NATALIO PENEYRA and NATALIO PENEYRA, an  
Insane Person, by ADRIANO BORHA, His Guard-  
ian Ad Litem,

Appellant,

vs.

THE AMERICAN STEAMSHIP "KINAU," Her En-  
gines, Machinery, Boilers, Tackle, Apparel, Boats,  
Furniture and Appurtenances, and INTER-ISLAND  
STEAM NAVIGATION COMPANY, LIMITED,  
Bailee, Claimant and Owner Thereof,

Appellees.

Apostles on Appeal.

Upon Appeals from the United States District Court  
for the Territory of Hawaii.



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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**Names and Addresses of Attorneys.**

For Libellant:

GEO. A. DAVIS, FRED PATTERSON and  
J. J. BANKS, Honolulu, Hawaii.

For Libellee and Claimant:

SMITH, WARREN & WHITNEY, Honolulu,  
Hawaii. [1\*]

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*In the United States District Court in and for the  
District and Territory of Hawaii.*

No. 172.

NATALIO PENEYRA, etc.,

Libellant,

vs.

The American Steamship "KINAU," Her Engines,  
etc.,

Libellee.

**Order Extending Time to July 24, 1918, to Transmit  
Record on Appeal.**

Now, on this 24th day of June, A. D. 1918, it appearing from the representations of the clerk of this court that it is impracticable for said clerk to prepare and transmit to the clerk of the Ninth Circuit Court of Appeals, at San Francisco, California, the transcript of the record on assignment of errors in the above-entitled cause, within the time limited therefor by the citation heretofore issued in this

\*Page-number appearing at foot of page of original certified Apostles on Appeal.

cause, it is ordered that the time within which the clerk of this court shall prepare and transmit said transcript of the record on assignment of errors in this cause, together with the said assignment of errors and all papers required by the praecipe of plaintiff in error herein, to the clerk of the Ninth Circuit Court of Appeals, be, and the same is hereby extended to July 24, 1918.

Dated at Honolulu, Hawaii, June 24, 1918.

HORACE W. VAUGHAN,  
Judge, United States District Court.

Filed June 24, 1918. A. E. Harris, Clerk. Wm. L. Rosa, Deputy Clerk. [2]

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*In the United States District Court in and for the  
District and Territory of Hawaii.*

No. 172.

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Libellant,

vs.

The American Steamship "KINAU," Her Engines,  
etc.,

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cuit Court of Appeals, at San Francisco, California, the transcript of the record on assignment of errors in the above-entitled cause, within the time limited therefor by the citation heretofore issued in this cause, it is ordered that the time within which the clerk of this court shall prepare and transmit said transcript of the record on assignment of errors in this cause, together with the said assignment of errors and all papers required by the praecipe of plaintiff in error herein, to the clerk of the Ninth Circuit Court of Appeals, be, and the same is hereby extended to August 24, 1918.

Dated at Honolulu, Hawaii, July 24, 1918.

HORACE W. VAUGHAN,  
Judge, United States District Court.

Filed July 24th, 1918, at 2 o'clock and 0 minutes  
P. M. A. E. Harris, Clerk. By \_\_\_\_\_, Deputy  
Clerk. [3]

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#### **Clerk's Statement Under Admiralty Rule 4.**

##### **TIME OF COMMENCING SUIT.**

March 16, 1918: Verified libel was filed and motion issued to the United States Marshal for the District of Hawaii.

##### **NAMES OF ORIGINAL PARTIES.**

Libellant: Anatalio Pinira, an insane person, by Adriano Borha, his guardian *ad litem*.

Libellee: The American steamship "Kinau" her engines, machinery, boilers, tackle, apparel, boats, furniture and appurtenances.

## DATES OF FILING OF PLEADINGS.

March 16, 1918: Libel.

April 5, 1918: Answer of Claimant.

## ATTACHMENT OF PROPERTY AND PROCEEDINGS.

March 16, 1918: Monition was issued and delivered to the United States Marshal for the District of Hawaii. Said monition was thereafter returned into court with the following return by the said marshal:

“In obedience to the within Monition, I attached the Amer. S. S. ‘KINAU’ therein described, on the 18th day of March, A. D. 1918, and have given due notice to all persons claiming the same that this Court will, on the 5th day of April, A. D. 1918 (if that day be a day of jurisdiction, if not, on the next day of jurisdiction thereafter), proceed to trial and condemnation thereof, should no claim be interposed for the same.

J. J. SMIDDY,

United States Marshal.

By L. K. Silva,

Deputy.

Honolulu, March 18th, 1918.” [4]

March 18, 1918: Claim filed by the Inter-Island Steam Navigation Company, Limited by its 2d vice-president and its acting treasurer, as true and lawful owners of the American steamship “Kinau” her engines, etc., together with a bond to the United States marshal for the District of Hawaii, in the sum of twenty thousand dollars (under section 941

of the Revised Statutes of the United States). Notice of said bonding and release was given to the said Marshal by the Clerk of said Court.

#### TIME WHEN TRIAL WAS HAD.

The above-entitled cause came on regularly for trial in the United States District Court for the Territory of Hawaii, before the Honorable Horace W. Vaughan, Judge of said court, on the following days, to wit: April 5, 1918, April 23, 1918, April 24, 1918, May 3, 1918, and May 10, 1918.

At the trial of said cause the following witnesses were examined (*viva voce*) and gave their evidence in open court before the said Judge of said court.

Witnesses called on behalf of the libellant: Adriano Borha, Henry Aki, Valentine Cabacha, Pablo Sanches, R. G. Ayer, W. A. Schwallie, Eduara Pinaira and Leonardo Pinera. On May 13, 1918, upon request of proctor for the libellant, Mr. Geo. A. Davis, the libellant was called and examined by the Court.

Witnesses called on behalf of the libellee: John Wailiula, Kui Lobo, A. M. Aika, Kua Pu, Capt. James Gregory, David Kamiopili, O. J. Ottersen.

May 20, 1918: Opinion in cause, Vaughan, Judge.

May 23, 1918: Decree filed and entered. [5]

May 23, 1918: Notices of Appeal Filed.

May 23, 1918: Assignments of Error.

#### Clerk's Certificate to Statement Under Admiralty Rule 4.

United States of America,  
District of Hawaii,—ss.

I, A. E. Harris, Clerk of the United States Dis-

trict Court for the Territory of Hawaii, do hereby certify the foregoing to be a full, true and correct statement showing the time of the commencement of the above-entitled suit; the names of the original parties thereto; the several dates when the respective pleadings were filed; an account of the proceedings showing the attachment of the said vessel and her release under bonds; the time when the trial was had and the name of the Judge hearing the same; the date of entry of the final decree and the date when the notice of appeal was filed and the date when the assignments of error was filed in the case of *Natalio Peneyra, etc., vs. The American Steamship "Kinau," Her Engines, etc., Admiralty Number 172.*

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court this 25th day of July, A. D. 1918.

A. E. HARRIS,  
Clerk U. S. District Court, Territory of Hawaii. [6]

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[Endorsed]: In the United States District Court for the Territory of Hawaii. In Admiralty—*In Rem. Anatalio Pinira, an Insane Person, by Adriano Borha, His Guardian Ad Litem, Libellant, vs. The American Steamship "Kinua," Her Engines, Machinery, Boilers, Tackle, Apparel, Boats, Furniture, and Appurtenances. Suit for Damages for Breach of Marine Contract for not Carrying Passenger Safely, and for Damages, Expenses and Maintenance. Libellant's Libel. Filed March 16, 1918, at 11 o'clock A. M. (Sgd.) A. E. Harris, Clerk. [7]*

*In the District Court of the United States in and for  
the District and Territory of Hawaii.*

IN ADMIRALTY—IN REM.

NATALIO PENEYRA, ANATALIO PINIRA,  
an Insane Person, by ADRIANO BORHA,  
His Guardian *Ad Litem*,

Libellant,

vs.

The American Steamship "KINAU," Her Engines,  
Machinery, Boilers, Tackle, Apparel, Boats,  
Furniture and Appurtenances,

Libellee.

SUIT FOR DAMAGES FOR BREACH OF  
MARINE CONTRACT FOR NOT CARRY-  
ING PASSENGER SAFELY, AND FOR  
DAMAGES, EXPENSES AND MAINTEN-  
NANCE.

**Libellant's Libel.**

To the Honorable Judges of the District Court of  
the United States in and for the District and  
Territory of Hawaii.

The libel of Anatalio Pinira, an insane person, by  
Adriano Borha, his guardian *ad litem*, now residing  
in the District of Hawaii and within the jurisdiction  
of this Honorable Court, late a passenger on board  
the steamship "Kinau," whereof James Gregory is  
or lately was master, against the said steamship, her  
engines, machinery, boilers, tackle, apparel, boats,  
furniture and appurtenances, in a cause of damage,

civil and maritime for a breach and breaches of the marine contract entered into between the libellant and the libellee, Anatalio Pinira, and the said libellee alleges and charges as follows:

## 1.

That on or about the 19th day of December, A. D. 1917, the said steamship "Kinau" was engaged in carrying and conveying passengers [8] and freight for hire and reward from the port of Honolulu on the Island of Oahu to the port of Nawiliwili on the Island of Kauai, and to other ports and places on the Island of Kauai and from the said port of Nawiliwili and other ports and places on the Island of Kauai to the port of Honolulu aforesaid, and is owned and operated by the Inter-Island Steam Navigation Company, Limited, an Hawaiian corporation, which said corporation on the 19th day of December, A. D. 1917, had a ticket office and duly authorized agent at the port of Nawiliwili, who was then authorized to sell tickets for the conveyance of passengers from the said port of Nawiliwili to the said port of Honolulu, and the said Anatalio Pinira then being at the said port of Nawiliwili aforesaid, applied to the said agent of said corporation for a ticket and a first-class passage from the said port of Nawiliwili to the port of Honolulu aforesaid, and he paid to the said agent for the said ticket and the said first-class passage from the port of Nawiliwili to the port of Honolulu aforesaid, the sum of eight dollars and eighty-six (\$8.86) cents, and accordingly received said ticket for said first-class passage from the port of Nawili-



wili, Island of Kauai, to the port of Honolulu, Island of Oahu, and Territory of Hawaii, on the said 19th day of December, A. D. 1917, from the said agent. And accordingly the said Anatalio Pinira was taken on board of one of the small boats run and operated by the master and officers of the steamship "Kinau" and under their direction and control from said landing at Nawiliwili to the said steamship "Kinau," which was then lying in the Harbor of Nawiliwili at anchor, and the said Anatalio Pinira was assisted from said small boat so run and operated as aforesaid on to the said steamship "Kinau," and was taken and placed below the main deck, and after being received on board as such passenger and being below [9] the main deck and on the second deck of said steamship "Kinau," the second officer of said steamship "Kinau" ordered the said Anatalio Pinira to go down into the steerage and then and there shoved him back from the side of the said steamship and on the second deck thereof, and it being dark the said Anatalio Pinira without any fault or negligence on his part and by reason of the negligence and improper conduct of the master and officers of said steamship fell down through an open hatch which was then open, unguarded and improperly lighted, into the hold of said steamship, a distance of about fifteen feet, and struck his head against the freight then stored and being in the hold of said steamship "Kinau," and sustained serious and permanent wounds, bruises and injuries in and upon his head and other portions of his body, and from the effects

of this said injuries the said Anatalio Pinira lost his reason and became insane and was declared insane by a court of competent jurisdiction, and the said Anatalio Pinira then and there suffered and underwent great pain of body and mind and sustained other and serious wounds, bruises and injuries in and upon his head and body and became sick and ill and was forced and compelled to pay out and expend and did pay out and expend a large sum of money for medical and surgical attendance.

## 2.

That on or about the 19th day of December, A. D. 1917, at Nawiliwili aforesaid, the owners of said steamship "Kinau," upon application to its proper and duly authorized agent, sold to the said Anatalio Pinira a ticket for a valuable consideration entitling him, the said Anatalio Pinira, to be carried and conveyed as a first-class passenger from the port of Nawiliwili aforesaid to the port of Honolulu aforesaid, and on the day and year aforesaid at Nawiliwili aforesaid, he, the said Anatalio Pinira, was received on board said steamship "Kinau," then lying at anchor in the Harbor of Nawiliwili as such passenger, the said steamship "Kinau" then being run and operated as a passenger steamship [10] between the port of Nawiliwili on the Island of Kauai to the port of Honolulu in the Territory of Hawaii, and the master and owners of said steamship, for and on behalf of said steamship, undertook and agreed to carry and convey the said Anatalio Pinira from the said port of Nawiliwili aforesaid to the port of Honolulu

aforesaid safely and without injury, and to use due and reasonable care in and about the conveyance of the said Anatalio Pinira from said port of Nawiliwili to the port of Honolulu aforesaid, and it became and was the bounden duty of the master of said steamship "Kinau" and its officers and the owner of said steamship to assign the said Anatalio Pinira to that portion of the said steamship set aside for first-class passengers, but the master and officers of said steamship in violation of said contract and agreement and of the obligations arising from said marine contract, and not regarding their duty and obligations in that behalf, forced the said Anatalio Pinira and told him to go to the steerage quarters on board of said steamship, and the master and officers of said steamship in violation of their said contract and agreement so entered into between the said Anatalio Pinira and the owners of said steamship, upon receiving the said Anatalio Pinira on board of said steamship negligently and improperly left the hatch on the second deck of said vessel open and unguarded and insufficiently lighted, and the said Anatalio Pinira in attempting to obey the order of the second officer of said steamship to go down into the steerage quarters of said steamship and without any fault on his part, and by reason of such negligence as aforesaid, suddenly stepped into large and dangerous space from which the hatch had been removed and left so unguarded and unlighted as aforesaid, and fell down into the hold of said steamship a distance of about fifteen feet, and sustained severe and serious injuries

to his head and other parts of his body, and from which said injuries so occasioned as aforesaid the said Anatalio Pinira lost his reason and became insane and became sick and ill and suffered and underwent great pain of body and mind. [11]

And the said libellant further alleges and charges that on or about the 19th day of December, A. D. 1917, at the port of Nawiliwili on the Island of Kauai, he, the said Anatalio Pinira, engaged a first-class passage from the said port of Nawiliwili on the Island of Kauai, to the port of Honolulu on the Island of Oahu, and paid his fare and passage money for his ticket and passage as a first-class passenger from the port of Nawiliwili aforesaid to the port of Honolulu aforesaid, and on the day and year aforesaid the master and officers of said steamship "Kinau," for and in behalf of said steamship and its owners, received the said Anatalio Pinira on board the said steamship "Kinau" as a first-class passenger and undertook, contracted and agreed to carry and convey him safely and without injury from the port of Nawiliwili aforesaid to the port of Honolulu aforesaid, yet the said master and officers of said vessel, in violation of said contract and agreement so entered into as aforesaid, between the said steamship, the owner thereof, and by the second officer of said steamship, ordered and directed the said Anatalio Pinira to go down into the steerage quarters and treated him in a rough and improper manner and shoved him over towards the hatchway on the second deck of said vessel, which was open, unguarded and unlighted, and the said Anatalio

Pinira in obeying said order and directions to go into the steerage quarters, and without any fault or negligence on his part, stepped into said hatchway and fell down into the hold of said steamship, a distance of about fifteen feet and sustained serious and permanent wounds, bruises and injuries to such an extent that he lost his reason and became and now is insane, and was declared insane in the month of December, A. D. 1917, after he received said injuries, by a court of competent jurisdiction. And that on or about the 29th day of January, A. D. 1918, upon application [12] duly made by Adriano Borha, the Judge of the Circuit Court of the Fifth Judicial Circuit of the Territory of Hawaii, sitting at Chambers in probate, and after a hearing upon said application appointed the said Adriano Borha guardian of the person and property of the said Anatalio Pinira, who had been and was adjudged insane, and he, the said Adriano Borha, is now the guardian of the person and property of the said Anatalio Pinira, an insane person. That the said American steamship "Kinau" is an American steamship and duly registered as such in the Territory of Hawaii, and was on the 19th say of December, A. D. 1917, engaged in the transportation and conveyance of passengers and freight for hire and reward between the port of Nawiliwili on the Island of Kauai and the port of Honolulu on the Island of Oahu, and is owned and operated by the Inter-Island Steam Navigation Company, Limited, an Hawaiian corporation, for the purposes aforesaid, and said steamship is now lying at the port of Honolulu in the Dis-

trict of Hawaii and is about to proceed to sea.

## 4.

And the said libellant, by his guardian *ad litem*, further alleges and charges that by reason of the violation of the duty of the master and officers of the said steamship and the breach of the marine contract and agreement entered into between this libellant and the said steamship and the owners thereof, to carry and convey this libellant from the port of Nawiliwili to the port of Honolulu aforesaid, safely and without injury, he suffered and sustained the injuries and bruises as aforesaid, and was and is permanently injured and disabled, and by reason thereof and because of said injury he became insane and is now insane and claims damages in the sum of ten thousand dollars (\$10,000), together with the costs of this suit, and the said libellant further alleges that the said Anatalio Pinira, an insane person, has no money or property within or without the [13] jurisdiction of this court and is wholly unable to furnish any bond or stipulation for costs or to make any deposit for costs, and no other person or persons is interested in this suit who is able to furnish any bond or stipulation for costs, and the libellant prays that this Court will order and direct that the said Anatalio Pinira, an insane person, be allowed to begin and prosecute this suit by his guardian *ad litem*, Adriano Borha, from the commencement thereof and down to final decree and until the further order of this Court without filing bond or stipulation for cost or otherwise, as a poor person, and the said Anatalio Pinira is now an insane person

and is not competent to look after his business or affairs or to bring this suit, and the said Adriano Borha, who is now the guardian of the person and property of the said Anatalio Pinira, prays that he may be appointed the guardian *ad litem* of the said Anatalio Pinira, the libellant in this suit, and that such order be made and entered up forthwith. And the said libellant prays for such other and further relief as he may be entitled to in the bringing of this suit in admiralty and justice.

5.

That all and singular the premises were and are true and within the admiralty and jurisdiction of the United States and of this Honorable Court.

WHEREFORE, the said Adriano Borha, for and on behalf of the libellant, prays that until the further order of this Court he may be allowed to file this libel and prosecute this suit as the guardian *ad litem* of Anatalio Pinira, an insane person, down to final hearing and decree without furnishing any bond or stipulation for costs as provided by the rules of this court, and that the United States Marshal for the District of Hawaii may be directed to serve such process and other papers without any deposit for costs being first made and without requiring the payment of his fees for service, and that the [14] clerk of this court issue such process and do all such acts and things as may be necessary in the premises, until the further order of this Court, without requiring any bond or stipulation or deposit for costs first being made by said insane person or his guardian *ad litem*. And the said libellant by his said guardian *ad litem*.

further prays that process in due form of law according to the course of this Honorable Court in cases of admiralty and maritime jurisdiction may issue against the said steamship, her engines, boilers, machinery, tackle, apparel, boats, furniture and appurtenances, and that all persons having interest therein may be cited to appear and answer all and singular the matters herein set forth, and that this Honorable Court will be pleased to decree the payment of the damages for the breaches of the marine contract aforesaid, with costs, and that the said steamship, her engines, boilers, machinery, tackle, apparel, boats, furniture and appurtenances may be condemned and sold to pay the same, and that the libellant by his guardian *ad litem* may have such other and further relief in the premises as in admiralty and justice he may be entitled to receive.

ANATALIO PINIRA,

An Insane Person,

By (Sgd.) ADRIANO BORHA,

His Guardian *Ad Litem*.

Dated at Lihue, Hawaii, this 12th day of March,  
A. D. 1918. [15]

United States of America,

District of Hawaii,

County of Kauai,—ss.

Now comes Adriano Borha, and upon being first duly sworn upon his oath deposes and says that he has read the foregoing libel in this suit and that he has a personal knowledge of the facts and statements therein set forth and contained, and that on the 29th day of Jannary, A. D. 1918, he was duly appointed



the guardian of the person and property of Anatalio Pinira, an insane person, and the libellant in this suit, and that the facts, statements and allegations set forth and contained in the foregoing libel are just, true and correct.

(Sgd.) ADRIANO BORHA.

Subscribed and sworn to on this 12th day of March,  
A. D. 1918, before me

[Seal]

(Sgd.) K. C. AHANA,

A Notary Public in and for the Fifth Judicial Circuit of the Territory of Hawaii. [16]

**Order Appointing Adriano Borha Guardian Ad Litem.**

Upon perusing the foregoing libel I do order and direct that Adriano Borha be and he is hereby appointed the guardian *ad litem* in this suit of and for the libellant, Anatalio Pinira, an insane person, and he is hereby authorized to begin and prosecute this suit as such guardian *ad litem* from the issuing of process down to final decree until the further order of this court. And that the said Anatalio Pinira, an insane person, the libellant herein, by his said guardian *ad litem*, shall commence and prosecute said suit in *forma pauperis*, and I hereby further order and direct that neither the said libellant nor his said guardian *ad litem* shall be required to make any deposits for costs or to file any bond or stipulation for costs in this suit until the further order of this court, and the clerk of this court is hereby directed to file this libel, issue process as prayed for and file all other papers and documents, and do all

such other acts and things as may be necessary herein without the filing any bond or stipulation for costs or making any deposit by the said libellant or his guardian *ad litem*. The United States Marshal is hereby required and commanded to serve the process issued herein and all other papers and documents in this suit and do all such acts and things as may be necessary without the payment of any fees or deposit for costs being made until the further order of this court.

Let process issue as prayed for returnable on Friday, the 5th day of April, A. D. 1918, at 10 o'clock in the forenoon of said day.

And I do hereby appoint George A. Davis and J. J. Banks and Fred. Patterson, proctors for the libellant in this suit. Let this order be entered up forthwith.

Dated this 16th day of March, A. D. 1918.

[Seal] (Sgd.) J. B. POINDEXTER,  
Judge U. S. District Court for the Territory of  
Hawaii. [17]

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[Endorsed]: No. 172. In the District Court of the United States for the Territory of Hawaii. In Admiralty—In Rem. Anatalio Pinira, an Insane Person, by Adriano Borha, His Guardian *ad Litem*, Libellant, vs. The American Steamship "Kinau," Her Engines, Machinery, etc., Libelee. Answer of Claimant. Smith, Warren & Whitney, Bank of Hawaii Building, Honolulu, T. H., Proctors for Claimant. Filed Apr. 5, 1918, at 3 o'clock P. M.

A. E. Harris, Clerk. By (Sgd.) Wm. L. Rosa,  
Deputy Clerk.

Service of the within Answer is admitted this 5th  
day of April, 1918.

GEO. A. DAVIS,  
J. J. BANKS,  
Proctors for Libellant. [18]

*In the District Court of the United States in and  
for the District and Territory of Hawaii.*

IN ADMIRALTY—IN REM.

ANATALIO PINIRA, an Insane Person, by  
ADRIANO BORHA, His Guardian Ad  
Litem,

Libellant,

vs.

The American Steamship "KINAU," Her Engines,  
Machinery, Boilers, Tackle, Apparel, Boats,  
Furniture and Appurtenances,

Libelee.

**Answer of Claimant.**

To the Honorable Judges of the United States Dis-  
trict Court for the District and Territory of  
Hawaii:

Now comes the Inter-Island Steam Navigation  
Company, Limited, owner and claimant of the above-  
named American Steamship "Kinau," her engines,  
machinery, boilers, tackle, apparel, boats, furniture  
and appurtenances, and for answer to the libellant's

libel in the above-entitled cause says:

I.

Answering the allegations of paragraphs 1, 2 and 3 of said libel, claimant admits that the libellant Anatalio Pinira (named on his passage ticket as "Natalio Beneela"), purchased a ticket for first-class passage on said steamship "Kinau" on or about the 19th day of December, 1917, from Nawiliwili to the port of Honolulu, and [19] was carried to and received on board said vessel; but claimant denies that after said libellant was received on board said vessel he was taken or placed below the main deck, and denies that the second officer or any officer or employee of said vessel in any manner ordered, told, required or forced said libellant to go into the steerage, and/or pushed, shoved or forced libellant in any manner or at all, at any place or time whatsoever, or treated him in a rough or improper manner in any respect, and denies that it was dark on the second deck of said vessel.

Further answering said paragraphs 1, 2 and 3, claimant admits that the said libellant while on the second deck of said vessel fell into an open hatch into the hold of said vessel a distance of about eight feet and struck his head on the floor or some object in said hold and sustained some injury, the nature and extent whereof claimant is ignorant, but upon information and belief claimant denies that the said injuries were serious or permanent, and denies that from the effects thereof the said Anatalio Pinira lost his reason or became insane.

Further answering said paragraphs 1, 2 and 3,

claimant denies that the hatch into which the libellant fell was left improperly open or unguarded or was improperly lighted, and alleges on the contrary that at the time of said accident said hatch was open and in actual use for the reception and deposit of freight and baggage therein, and further alleges that the premises around and near the said hatch were fully and adequately lighted.

II.

Further answering the allegations of said libel with respect to the alleged insanity of the libellant, this claimant says that it has no knowledge sufficient to enable it to answer the allegations that the libellant was or is insane, and therefore requires proof thereof. [20]

III.

Claimant further admits that it is a common carrier of freight and passengers by water within the jurisdiction of this Honorable Court.

IV.

Claimant further denies that by reason of the injury or injuries sustained by the libellant at the time alleged in said libel the said libellant was or is damaged in the sum of Ten Thousand Dollars (\$10,000), or at all, by reason of any act or fault of this claimant.

WHEREFORE claimant prays that the said libel may be dismissed with costs.

Dated Honolulu, T. H., April 5th, 1918.

INTER-ISLAND STEAM NAVIGATION  
COMPANY, LIMITED,

(Sgd.) By NORMAN E. GEDGE,  
Vice-President.

(Sgd.) By S. B. ROSE,  
Acting Treasurer.

SMITH, WARREN & WHITNEY,

Proctors for said Claimant.

United States of America,  
Territory of Hawaii,  
City and County of Honolulu,—ss.

Norman E. Gedge, being duly sworn, deposes and says that he is the Vice-President of the Inter-Island Steam Navigation Company, Limited, a Hawaiian corporation, claimant in the above-entitled cause, whose answer is above set forth; that he has read said answer and knows the contents thereof and that the matters therein stated are true except that as to the matters stated on information and belief and he believes them to be true.

(Sgd.) NORMAN E. GEDGE.

Subscribed and sworn to before me this 5th day  
of April, 1918.

[Seal] (Sgd.) A. K. AONA,  
Notary Public, First Judicial Circuit, Territory of  
Hawaii. [21]

**Libelant's Exhibit "A"—Letters of Guardianship.**  
*In the Circuit Court of the Fifth Circuit, Territory  
of Hawaii.*

**AT CHAMBERS—IN PROBATE.**

In the Matter of the Guardianship of ANATALIO  
PINIRA, an Insane Person.

**LETTERS OF GUARDIANSHIP.**

Adriano Borha, of Lihue, County of Kauai, Ter-  
ritory of Hawaii, is hereby appointed guardian of  
the person and property of Anatalio Pinira, an in-  
sane person.

By order of the Honorable LYLE A. DICKEY,  
Judge of the Circuit Court of the Fifth Judicial  
Circuit, this 29th day of January, 1918.

[Seal] (Sgd.) D. WM. DEAN,  
Clerk of the Circuit Court of the Fifth Circuit.

I hereby certify that the foregoing is a true copy  
of the letters of guardianship made and filed in the  
guardianship of Anatalio Pinira, an insane person.

Attest my hand and the seal of the said Court at  
Lihue, Kauai, territory of Hawaii, this 29th day of  
January, A. D. 1918.

[Seal] (Sgd.) D. WM. DEAN,  
Clerk Circuit Court, Fifth Circuit.

Libellant's Exhibit "A." Filed Apr. 5, 1918. A.  
E. Harris, Clerk. By (Sgd.) Wm. L. Rosa, Deputy  
Clerk. [22]

## Libelee's Exhibit No. 1—Certificate of Discharge.

## DUPLICATE.

BEFORE THE COMMISSIONERS OF IN-  
SANITY OF THE TERRITORY OF  
HAWAII.

No. 2221.—Asylum Index.

In the Matter of the Application for the Discharge  
of ANATALIO PINIAR (also Known as  
ANATILIO PINIRA), from the Insane  
Asylum.

## CERTIFICATE OF DISCHARGE.

To the Superintendent of the Insane Asylum:

Sir: Whereas, at a meeting of the Commissioners  
of Insanity of the Territory of Hawaii held at the  
Insane Asylum in Honolulu on May 2d and 3d, 1918,  
the undersigned Commissioners made examination  
of one Anatalio Piniar (also called Anatilio Pinira),  
heretofore committed to the asylum as an insane  
person, and heard evidence upon the application for  
the discharge of said patient, and upon such exam-  
ination and the record shown are satisfied that said  
patient is now sane, and may be released without  
danger to the public safety.

Therefore, you are hereby authorized and directed  
to discharge the said Anatalio Piniar (or Anatilio  
Pinira) from the Insane Asylum.

Dated Honolulu, T. H., May 3d, 1918.



By the Commissioners:

(Sgd.) GEORGE HERBERT.

(Sgd.) CHAS. B. COOPER, M. D.

Libellee's Ex. 1. Filed May 10, 1918. A. E. Harris, Clerk. By (Sgd.) Wm. L. Rosa, Deputy Clerk.  
[23]

*In the United States District Court, in and for the  
Territory of Hawaii.*

AD.-172.

ANATALIO PENEYRA, an Insane Person, by  
ADRIANO BORHA, His Guardian Ad Litem,  
Libellant,

vs.

The American Steamship "KINAU," Her Engines,  
Machinery, Boilers, Tackle, Boats, Furniture  
and Appurtenances,

Libellee.

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Honolulu, H. T., July 1, 1918.

Filed July 1, 1918. A. E. Harris, Clerk. By Wm. L. Rosa, Deputy Clerk. [24]

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*In the United States District Court, in and for the  
Territory of Hawaii.*

AD.-172.

IN ADMIRALTY—IN REM.

Before the Honorable HORACE W. VAUGHAN,

Judge of said Court.

ANATALIO PENEYRA, an Insane Person, by  
ADRIANO BORHA, His Guardian Ad Litem,  
Libellant,

vs.

The American Steamship "KINAU," Her Engines,  
Machinery, Boilers, Tackle, Boats, Furniture  
and Appurtenances,

Libellee.

APPEARANCES:

For the Libellant:

GEORGE A. DAVIS, J. J. BANKS, and FRED  
PATTERSON, Esquires.

For the Libellee:

L. J. WARREN, Esquire, of the Firm of  
Messrs. SMITH, WARREN & WHITNEY.

**Transcript of Testimony. [25]**

Honolulu, H. T., April 5, 1918.

2:00 P. M.

Mr. WARREN.—This being the return day, I

would ask that the names of Smith, Warren & Whitney be entered as counsel for the Inter-Island Steam Navigation Company, Limited. I would state that the answer of the claimant has just been filed.

Mr. DAVIS.—It is stipulated, subject to your Honor's approval, that he shall have leave at any time, subject to the approval of the Court, to file a supplemental statement, supplemental answer.

The COURT.—All right.

**Testimony of Adriano Borha, for Libellant.**

Direct Examination of ADRIANO BORHA, for Libellant, sworn.

Mr. DAVIS.—What is your name?

A. Adriano Borha.

Q. Where do you reside, Borha?

A. At the present time I live in Ahuula Street, Kalihi.

Q. But you are employed at the Immigration Station? A. Yes, sir.

Q. As Interpreter? Filipino Interpreter?

A. Yes, sir.

Q. And do you know Anatalio Peneyra?

A. I know him.

Q. What nationality is he?

A. He is Filipino.

Q. How old is he?

A. He is about forty-five years old.

Q. Where is he now? A. I saw him— [26]

Q. Is he in the insane asylum?

A. Yes, sir.

(Testimony of Adriano Borha.)

Q. Here in Honolulu? A. Yes, sir.

Q. Was you present when he purchased a ticket from the Inter-Island Steamship Company?

A. No.

Q. You were not present? A. No.

Q. You don't know anything about that?

A. I don't know.

Mr. WARREN.—I am willing to make the admission that Anatalio Peneyra did purchase a first-class passage ticket for passage from Nawiliwili to Honolulu, and was received on board the vessel.

The COURT.—All right.

Mr. DAVIS.—Were you appointed as guardian of Anatalio Peneyra?

A. Yes, sir.

Mr. DAVIS.—I offer certified copies, your Honor, of the letters of guardianship under seal of the Circuit Court of the Fifth Circuit.

Q. Was he a resident of the Island of Kauai at the time you were appointed his guardian, he resided on Kauai, lived on Kauai?

A. I think he was brought to Honolulu—

Q. I know, but he lived there, that's where his home was? A. Yes, sir.

The COURT.—Ask him where he stayed. He stayed on Kauai?

A. Yes, sir.

Mr. DAVIS.—Are you the guardian of this insane person at the present time? [27]

A. Yes, sir.

Q. Has he got any children?

(Testimony of Adriano Borha.)

A. He has one.

Q. How old is it?

A. Between six and seven years old.

Q. Where is his wife?

A. He is a widower, he has no wife.

Q. Well, where is that child now?

A. In my house.

Q. Living with you?      A. Yes, sir.

Q. You say you were not present with him on the trip that he came up here?      A. What is that?

Q. You wasn't present with him on the trip when he come up here.      A. I wasn't there.

Q. Do you know anything about his injuries?

A. I just heard from the sheriff.

Q. Never mind what you heard, but do you know of your own knowledge of any injury he received?

A. Yes, when I saw him in the hospital he had some cloths around his head.

Q. What hospital?      A. Lihue.

Q. Where were they placed?

A. Around his head.

Q. You mean what, you said cloths?      A. Cuts.

Q. You mean wounds, you mean cuts?

A. Yes.

Q. Around his head?      A. Yes.

Q. How long was he in the Lihue hospital?

A. I think about one week, I am not quite sure.

[28]

Q. And then they took him from there to the insane asylum?

The COURT.—I don't understand a thing in the

(Testimony of Adriano Borha.)

world about this case. Give me a short statement so I can catch the drift of his testimony.

Mr. DAVIS.—A short statement of the case is this, your Honor, that this man, this insane person, Anatalio Peneyra, purchased a first-class ticket, and this is his guardian *ad litem*. The man that was injured is insane, and he purchased a first-class ticket from Nawiliwili to Honolulu on board the steamship "Kinau," as alleged and set out in the libel, and when he went on board the vessel the libel sets out that he was ordered by an officer of the vessel to go to the steerage. They made a mistake and thought he was a second-class passenger and they ordered him *to* down to the steerage, and the place was dark and they left a hatch open and they backed him down through the hatchway and injured his head to such an extent that he became insane. That's the whole thing.

Mr. WARREN.—We deny the facts and that the injury did not result from any negligence on the part of the company.

Mr. DAVIS.—And Mr. Warren also admits that he did purchase a first-class ticket from the Inter-Island Steamship Company for that passage as alleged in the libel.

The COURT.—All right, gentlemen.

Mr. DAVIS.—Do you know anything else about the case?

A. That is all I know. I was called by the sheriff, Mr. Rice, and—Mr. Rice told me—

(Testimony of Adriano Borha.)

Q. Never mind what he told you; that's not evidence. [29]

A. That's all I know. When I went to the hospital I found him lying on the bed with his head tied with a piece of cloth.

Q. But you do know now that he is in the insane asylum and suffering? A. I know.

Q. And you have been appointed his guardian *ad litem*? A. Yes, sir.

Q. And you are willing to act? A. Yes, sir.

Mr. DAVIS.—I offer this in evidence, your Honor, and ask that it be marked Libellant's Exhibit 1.

The COURT.—Mr. Warren?

Mr. WARREN.—No objections.

The COURT.—All right.

Cross-examination of ADRIANO BORHA.

Mr. WARREN.—How long has this man been in the insane asylum?

A. Well, about three months now.

Q. Have you seen him since he has been there, have you seen him up there, called on him?

A. You mean here?

Q. Yes. A. Yes, I saw him.

Q. How many times? A. One time.

Q. How long ago? A. Last week.

Q. Just once since he has been in there? [30]

A. Yes, sir.

Q. Did you talk to him?

A. Yes, I talked to him.

(Testimony of Adriano Borha.)

Q. What did you talk about?

A. I asked him how much money he had in his trunk, and he told me, and he asked me about the case, and I asked him whether he remembered when he fell on the steamer, and he said no, he doesn't remember, and he said he never fell down in the steamer.

Q. Said what?      A. That's all what he said.

Q. He said what?

A. He said when I asked him whether he remembered when he fell down in the steamer he said he don't know anything about it, never fell down in the steamer. That's what he told me.

Q. Did he tell you where his money was, in his trunk, you say?      A. Yes, he told me.

Q. And he asked you how this case was getting on. Just tell us as near as you can remember what the conversation was, what he said and what you said.

A. I asked him whether he remembered when he fell down in the steamer and he said he doesn't know anything, and he said he never fell down in the steamer, but he asked me whether I got his money, and I said, "Yes, I got your money; I put it in the bank."

Q. Did he tell you how much it was?

A. Yes—he didn't tell me, but he just asked me if I got [31] his money.

Q. Did you tell him where you got it?

A. Yes, I told him.

Q. What did you tell him?

A. I told him it is in the bank; I put it in the bank.



(Testimony of Adriano Borha.)

Q. Where did you get the money?

A. Mr. Rice, the sheriff in Kauai, give me the money.

Q. Did you explain that to Peneyra?

A. I just told him I got his money and the money is in the bank. I got a receipt for his money.

Q. Then you said that he asked about the case, and asked you how the case was getting on?

A. No.

Q. He did not?      A. He did not.

Q. When did you first know him?

A. I knew him when I first saw him in the hospital.

Q. Did you ever know him—when did you first see him?

A. When he went to the hospital, that's the time I know him; I never know him before.

Q. Did you talk to him there in the hospital at all?

A. Yes, sir; I spoke to him, but he couldn't answer right; he couldn't speak well.

Q. Is that the only time you ever spoke to him and have him answer you was when you saw him in the hospital this time?

A. Yes; I talked with him in the hospital, when they took him to the hospital I talked to him.

Q. After he had been in the hospital a few days he was able to talk to you at the hospital in Lihue,—did he talk to [32] you there?

A. When they sent him to Honolulu from the hospital he came to the Filipino and we spoke together.

Q. He came to a Filipino camp?

A. Yes, they took him there.

(Testimony of Adriano Borha.)

Q. What did you talk about that time?

A. I told him, "Don't be worried about the child," I would take good care of the child and care as my own child; that's what I told him, and he said, "I thank you for that."

Q. Did he seem to be worried about the child?

A. No.

Q. But he said, "I thank you for that?"

A. What?

Q. He said, "I thank you for that," did he?

A. Yes, sir.

Mr. WARREN.—That is all.

Mr. DAVIS.—That's all.

### **Testimony of Henry Aki, for Libelant.**

Direct examination of HENRY AKI, for libelant, sworn.

Mr. DAVIS.—What is your name, please?

A. Henry Aki.

Q. Where do you reside, Mr. Aki?     A. Kauai.

Q. On the Island of Kauai?     A. Yes, sir.

Q. What is your business?

A. Automobile inspector. [33]

Q. And police officer?     A. Yes, sir.

Q. How long have you been a police officer?

A. Nine months.

Q. On the 19th day of December, 1917, was you on board the steamship "Kinau?"     A. Yes, sir.

Q. Where?     A. At Nawiliwili.

Q. Did you go aboard as a passenger, or for what purpose?

(Testimony of Henry Aki.)

A. Yes, I went on the "Kinau" and came down to Honolulu to be examined for the training camp.

Q. But you were a passenger on that day; did you see this man Anatalio Peneyra, the fellow that fell down the hatch and got his head hurt—did you see him that day? A. Yes, sir.

Q. What time was it that he came on board?

A. Between six and seven o'clock.

Q. Between six and seven o'clock?

A. Yes, sir.

Q. And how did he come—in a small boat from the landing? A. Yes, sir.

Q. And then from the small boat how did he get on the "Kinau"?

A. They had a ladder going up on the side of the boat.

Q. Where was he taken—on the top deck or below the top deck?

Mr. WARREN.—I think that is a little bit leading.

Mr. DAVIS.—All right.

Q. How did he get on board? Just describe to the Court how he got on board in your own language.

A. There is a ladder there on the steamer that is lowered [34] down where the passengers get on. He climbed up and went upstairs and went downstairs and got his luggage, and he had a little girl along with him, I presume about five or six years old, and he went downstairs looking around for his luggage, and as he goes around in the back by the

(Testimony of Henry Aki.)

hatch where they load up some of the freight, that place was all open.

Q. Yes; was it light?

A. No, sir; it was dark.

Q. Well, what happened to him?

A. It was dark; no passengers couldn't see it.

Q. What happened to him?

A. He fell down in the hold.

Q. Now, did you see anybody there asking him about his luggage?

A. No, sir, but I see his ticket.

Q. What kind of a ticket was it?

A. He had a yellow ticket, first-class ticket.

Q. And you saw that first-class ticket?

A. Yes, sir.

Q. Did you see any officers of the boat tell him to go to the steerage?

Mr. WARREN.—I object to that as leading.

Mr. DAVIS.—Hear any officer of the boat say anything to him?

A. No, sir, I did not.

Q. You didn't hear that?      A. No, sir.

Q. Now, what distance did he fall down there?

A. About twelve or fourteen feet.

Q. Well, how did he come to fall in the hold? Just describe to the Court how he came to fall in. [35]

A. Well, the hatch was just like this, and this is where the boat is, and here is the hold.

Q. Yes.

A. And then he must have dropped off from there; I didn't see how he fell down, but I was there

(Testimony of Henry Aki.)

about a minute after he fell down; I was by him below holding his head, and in the meantime there was two sailors jumped down.

Q. Was there any officers of the boat there at the time he fell down? A. No, sir.

Q. Was there any sailors on the boat there at the time he fell?

A. Well, there were some sailors around, but I don't know whether they were right there at the time he fell or not.

Q. But they were there,—after he already fell you saw them there? A. Yes, sir.

Q. Where did they come from?

A. Coming from the other side of the steamer where they have a hold.

Q. Wasn't that between-decks?

A. Well, this is the main deck, and then there is the lower deck.

Q. Well, wasn't it between-decks where you were standing there? A. Yes, sir.

Q. Why had you been up there,—did you have a first-class ticket? A. Yes, but— [36]

Q. What were you doing there? Isn't that the steerage?

A. Yes, it was the steerage downstairs.

Q. Why were you there?

A. Well, the man called us to go downstairs and see about this Filipino that fell down, knowing we were police officers of the county of Kauai.

Q. I see; and you saw him when he fell?

A. Didn't see him when he fell but saw him down

(Testimony of Henry Aki.)

there. I came down and saw him and held his head, hands right on his head.

Q. You say there was no light there at the time?

A. No, sir; no lights.

Q. Dark? A. Dark.

Q. And this hatch was open? A. Yes, sir.

Q. How long was that before the steamship weighed anchor and put to sea?

A. That was the last boat coming in.

Q. Well, that would be about how long before the boat would start?

A. About an hour and a half.

Q. After the last boat? A. Yes.

Q. Did she lie there an hour and a half after that?

A. Yes, sir.

Q. For what purpose?

A. Took the man up to the hospital.

Q. I mean, was she ready to sail when he fell?

Mr. WARREN.—I object to that as calling for a conclusion on the part of the witness. [37]

Mr. DAVIS.—What time was she scheduled to sail?

A. Five o'clock.

Mr. WARREN.—Object to that as immaterial.

The COURT.—I don't know for what purpose it is, but I will let him answer.

Mr. DAVIS.—She was scheduled to sail at five o'clock but she didn't sail?

A. No, she didn't sail.

Q. Scheduled to sail at five o'clock?

A. Yes, sir.

(Testimony of Henry Aki.)

Q. Didn't sail until what time?

A. Oh, about half-past seven.

Q. And you say this was between six and seven?

A. Yes, sir.

Q. After the man fell, who brought him up out of the hold?

A. Two sailors down there; they lifted him up, and then there was some other sailors alongside the hatch helped pull him out.

Q. Did you see how he was, the extent to which he was injured?

A. I don't know how old he was. I presume about forty-six or forty-seven years old.

Q. I mean, just describe his injuries that you saw there.

A. I saw the injuries right on his head there, saw blood on there.

Q. And on his face, any cuts?

A. Well, I didn't see his face.

Q. Well, just describe it to the Court more fully, will you?

A. Right on top here, on the head there. [38]

Q. What kind was it—was it a wound?

A. Yes, blood coming out.

Q. Was he bleeding freely? A. No, not freely.

Q. But it was bleeding? A. Yes.

Q. Well, was the man insensible, or how did he act?

A. Well, he was—he couldn't do anything, when you would talk to him he didn't seem to understand.

Q. Didn't seem to understand. Then what did you do with him?

(Testimony of Henry Aki.)

A. They took him along and put him on the boat and sent him ashore and took him to the hospital, I think.

Q. Did you go ashore? A. No, sir.

Q. Have you seen the man since?

A. I saw him a couple of times coming down—

Q. That was after his injuries?

A. Yes, when he was over at the hospital.

Q. Where did you say you saw him?

A. Saw him a couple of times going down with a nightgown towards Napali way one morning I came from Napali.

Q. He went out with a nightgown on, without any clothes on? A. Yes.

Q. How long was that after this accident happened?

A. I don't really know; about two weeks, I think.

Q. Do you know whether he was sent to the insane asylum or not?

A. Yes, sir; one police officer brought him to Honolulu and I was down to the wharf to meet him.

Q. Here in Honolulu? A. Yes, sir.

Q. When they brought him up from Napali?

A. Yes, sir. [39]

Q. Where did they take him?

A. Insane asylum.

Q. Did you go up there?

A. No, we had a *mittimus* where to send this man.

Q. And with that paper you took this man, injured on that day, to the insane asylum in Honolulu?



(Testimony of Henry Aki.)

A. I didn't take him myself; the police officer took him.

Q. But you were with the police officer that did take him? A. Yes, sir.

Q. Is there anything else that you know about this case?

Mr. WARREN.—I object to that as incompetent.

Mr. DAVIS.—I mean with reference to the injuries received.

A. I know the first officer of the boat said it was the fault of the bos'n.

Mr. WARREN.—I move to strike that out as hearsay.

The COURT.—I will sustain that.

Mr. DAVIS.—Was that made at the time of this accident? A. Yes, sir.

Mr. WARREN.—I object to the question; the statement has been stricken out now; there is no proper foundation for it.

Mr. DAVIS.—That is part of the *res gestae*.

Q. How long after this accident happened was this statement made?

A. Just a couple of minutes.

Mr. WARREN.—I *most* to strike the answer.

Mr. DAVIS.—While the man was down in the hold? A. Yes.

Mr. WARREN.—After your Honor sustained the first objection there was no foundation for the second question. [40]

Mr. DAVIS.—Was he in the hold when the statement was made? A. Yes, sir.

(Testimony of Henry Aki.)

The COURT.—I don't think it is admissible.

Mr. DAVIS.—I will ask your Honor to admit it for the time being and I will produce authorities, and if I am not right, then strike it out.

Q. You were present there? A. Yes, sir.

Q. And it was right within two minutes after happening, while the man was down in the hold, was it? How long after the man was in the hold?

A. I presume about two or three minutes.

Q. And where was the chief officer when he made this statement?

A. Why, he was just coming right in.

Q. And where was the bos'n?

A. The bos'n was way on the other side of the ship, of the boat.

Q. And who did he make this statement to?

A. Well, he made it in the presence of a friend of mine and myself.

Q. What did he say? Just tell the Judge what he said.

Mr. WARREN.—The same objection, your Honor.

A. He said it was the fault of the bos'n not covering the hatch up.

The COURT.—The fault of the bos'n not covering the hatch up?

Mr. DAVIS.—Surely, if that is not admissible then there is no part of the *res gestae* that is admissible.

The COURT.—I sustain the objection.

Mr. DAVIS.—I ask your Honor to reserve your ruling on it. [41]

(Testimony of Henry Aki.)

Q. Do you know the chief officer of the "Kinau," know that he was the chief officer?

A. I know he was first officer.

Q. Did he have a cap on? A. Yes, sir.

Q. What was on the cap? A. First officer.

Q. He was in uniform at the time on board the "Kinau"? A. Yes, sir.

Q. And you say that this—you are sure it was while the man was in the hold that he made that statement?

A. Yes, sir.

Q. Who was present when he made the statement?

A. Well, a special officer from Kauai. He is in the training camp now.

Q. And yourself? A. Yes, sir.

Q. Cabache, you mean? A. Yes, Cabache.

Q. Valentine Cabache. Have you ever seen the man since?

A. Since I come from the insane asylum?

Q. Yes. A. No, sir.

Q. How wide was this hatch where he fell down?

A. About that wide from here. (Indicating.)

The COURT.—About three or four feet wide?

A. Yes, sir.

Mr. DAVIS.—Were they putting any freight down there then? A. No, sir.

Q. It had been all loaded, eh?

A. Yes, they were loading in the front hatch.

Q. And they didn't put any more freight down in that hatch? A. No, sir. [42]

A. And it was left open there? A. Yes, sir.

(Testimony of Henry Aki.)

Cross-examination of HENRY AKI.

Mr. WARREN.—Did you come out in the same boat to the “Kinau” that Peneyra came on?

A. Yes, sir.

Q. And was his little girl with him? A. Yes.

Q. Did he get out of that little boat before you or after you? A. After me.

Q. And when you got out you went up the stairs or gangway on to the upper deck? A. Yes, sir.

Q. And then did you see him come up—he came up after you?

A. He come after me, but I went to my room.

Q. You saw him up there?

A. I saw him upstairs; yes, sir.

Q. When did you see him upstairs—how long after you had come up yourself?

A. I don't really know; I couldn't say how long, but I think—

Q. Well, five minutes, or what?

A. About five minutes.

Q. And did you see his little girl up on that deck?

A. Yes, sir.

Q. Where was she?

A. She was on the upper deck, on the other side.

Q. Do you know whether Peneyra had a stateroom on the upper deck? [43]

A. No, sir; I didn't see whether he had any stateroom or not, but I knew he had a first-class ticket.

Q. When you saw him on the upper deck what was he doing?

(Testimony of Henry Aki.)

A. I didn't take notice of what he was doing on board.

Q. What part of the ship was he when you saw him up there, what part of the deck?

A. On the left-hand side.

Q. Near the stairway that came up?

A. No, sir.

Q. Where?

A. On the other side. You go through a hallway and it's on the other side of the boat. The ladder was on the right-hand side.

Q. And when you saw him he was on the opposite side of the boat? A. Yes, sir.

Q. And the little girl with him? A. Yes, sir.

Q. And did you watch him and see where he went and what he did? A. No, sir.

Q. The next time you saw him it was after you had been called that there was an accident and you went downstairs? A. Yes, sir.

Q. How did you understand that he went down there to look for his baggage?

A. I saw him looking around for his baggage and he couldn't find it, when he first came up when I got up first.

Q. And when you saw him five minutes or so afterwards was that the time you saw him or did you see him twice up there? [44]

A. Just once.

Q. And that was the time you saw him looking for the baggage? A. Yes, sir.

Q. Did you see him go to the door that leads down

(Testimony of Henry Aki.)

to the next deck? A. No, sir.

Q. You didn't see that? A. No, sir.

Q. When you came on board do you know where the first officer was? A. No, sir.

Q. The first time you saw the first officer was when you had gone downstairs? A. Yes, sir.

Q. Where were you when you heard that there had been an accident downstairs and that you were wanted?

A. I was on the right-hand side of the boat just about a couple of feet away from my room.

Q. How long had you been there?

A. About five minutes, about five or ten minutes; around that time.

Q. And did you hurry downstairs?

A. Yes, sir.

Q. Did they come after you personally or did anybody go that heard of the accident?

A. A Filipino that came up for us, so we went running downstairs.

Q. Now, you say you think the man fell, you say, twelve or fourteen feet?

A. About twelve or fourteen; I don't know. [45]

Q. That is just your best judgment?

A. My opinion.

Q. If the measurement of that hatch would show that it was just eight feet, would you think that the measurement would be more exact *that* your memory?

A. I don't know how deep it is; I just say it is about twelve or fourteen feet.

(Testimony of Henry Aki.)

Q. You looked down in and saw him in there?

A. Yes, I saw him down there.

Q. You say there were no lights?

A. No lights; yes.

Q. Not even electric lights?

A. No; no electric lights on it.

Q. Were there any lights at all in the whole steerage quarters,—the space on the other side of that hatch, were there any lights? A. No lights.

Q. How about the side ports where they take in the passengers and freight on the 'tween-decks there? A. One side,—just half open.

Q. Which side was that?

A. The side he fell.

Q. Was the other side open at all? A. Yes, sir.

Q. Now, how do you fix the time of this accident?

You say it was between six and seven o'clock?

A. Well, it was after five when we came on board.

Q. After five? A. Yes, sir.

Q. When you got on board? A. Yes, sir.

Q. Well, what is the best recollection you have of the time you got on board? [46]

A. About six o'clock, I guess.

Q. About six o'clock?

A. Yes, sir, or a little after.

Q. When did the boat finally pull up the anchor and start for Honolulu?

A. Between half-past seven and eight.

Q. Between half-past seven and eight?

A. Yes, sir.

Q. How long do you think it took to send the boat

(Testimony of Henry Aki.)

in with that man and come back again?

A. I don't know; I didn't take the time.

Q. What is that?

A. I don't know; I didn't take the time.

Q. Well, your best judgment; how long do you think it kept the boat back?

A. About an hour, I think.

Q. And to your best recollection this accident happened about how long after you got on board,—five minutes? A. I don't know what time.

Q. Well, your best judgment; I am not asking you to be exact but would you say it was five minutes or fifteen minutes, as near as you can remember, after you came on board?

A. About ten minutes; ten or fifteen, I guess.

Q. Were they still loading freight in the forward hatch at that time? A. I don't know.

Q. You don't know that?

A. I don't know that.

Q. I thought you said a while ago that they were loading [47] freight forward?

A. I didn't say that.

Q. You did not say that? A. I don't think so.

Q. Looking at this hatch in the steerage quarters, is there any low railing or combing around the hatch, or is it right straight off the deck into the hold?

A. There wasn't anything around the hatch; the place was all open.

Q. Weren't there some strips of board there to put the cover on the hatch?

A. I didn't see that, I didn't notice that.



(Testimony of Henry Aki.)

Q. Well, then, you didn't pay much attention to whether they were loading freight into the boat before the accident?

A. In front? I know in the front hatch they were loading up.

Q. Before the accident? A. Yes, sir.

Q. Now, were they loading freight in the front hatches at the time of the accident?

A. I really don't remember.

Mr. WARREN.—That is all.

Mr. DAVIS.—Yes, that's all. [48]

### Testimony of Valentine Cabache, for Libellant.

Direct examination of VALENTINE CABACHE, for libellant, sworn.

Mr. DAVIS.—What is your name?

A. Valentine Cabache.

Q. What are you engaged in at the present time?

A. I am a student at the training camp.

Q. The officers' reserve camp at Schofield Barracks? A. Yes, sir.

Q. Do you know this man, Adriana Peneyra, that was injured that night on the boat? A. I do.

Q. How long have you known him?

A. I have known him for about four months.

Q. Now, on the night of the 19th, or in the evening of the 19th of December, 1917, were you a passenger on board the steamship "Kinau"?

A. I was.

Q. Where were you coming from?

A. I was coming from Nawiliwili.

(Testimony of Valentine Cabache.)

Q. Where to? A. To Honolulu.

Q. Bound for Honolulu? A. Yes, sir.

Q. Now, did you see Peneyra's ticket that night?

A. I did.

Q. Do you know what kind of a ticket he had?

A. Yes, sir.

Mr. WARREN.—It has already been admitted in the case that it [49] is first class.

Mr. DAVIS.—I know, but what kind of a ticket was it?

A. Yes.

Q. No, what kind of a ticket?

A. First-class ticket.

Q. Were you present at the time he fell down that hatch?

A. I didn't see him actually falling down.

Q. What did you see?

A. I saw him when he was down there in the hold.

Q. Yes.

A. And I saw him when he was taken by the men of the steamer outside and put on the small boat and landed at Nawiliwili.

Q. Yes, and now while he was in the hold did you see anything of the first officer of the vessel?

A. You mean if I saw the first officer there?

Q. Yes.

A. I did; he was around there.

Q. Was he near this place where the accident took place? A. Yes, sir.

Q. Did he make any statement why this man was in the hold?

(Testimony of Valentine Cabache.)

A. I did hear him say something.

Q. How long was that after the man was in the hold?

A. Well, it was about three or four minutes after I came.

Q. What did he say?

A. He said it was the bos'n's fault, that they didn't close the hatch.

Q. Where was the bos'n at the time—

Mr. WARREN.—I move to strike the answer as hearsay and incompetent, your Honor. [50]

The COURT.—I am of the opinion that the testimony is not admissible, but of course I will hear it, and each of you, whatever rights you have in regard to it, when I do rule I will give you the opportunity to except right then.

Mr. WARREN.—I am saving my exception, that is all, your Honor.

Mr. DAVIS.—Now, how long did he remain in the hold, how long before they took him out?

A. From the time I arrived it was just about the lapse of about one minute or a half a minute before they took him out.

Q. And as to lights and so forth there—was that between-decks where he fell down, was that between the upper and lower deck of the hold of the vessel, wasn't it?

A. I don't understand the lower deck.

Q. Well, was it the upper deck, up above?

A. Where the first-class passengers are?

Q. Yes. A. Yes, sir.

(Testimony of Valentine Cabache.)

Q. And this was down between-decks?

A. Yes.

Q. Now, was it light or dark there?

A. I wouldn't say it was light, but it was kind of dim over there.

Q. It was dim? A. Yes, sir.

Q. Dark there, is that it?

Mr. WARREN.—Object to that as leading.

Mr. DAVIS.—Well, was it dark?

Mr. WARREN.—Object to it as leading.

Mr. DAVIS.—How was it as to lightness?

Mr. WARREN.—Same objection, your Honor.

[51]

The COURT.—Which was it, light or dark?

A. More dark than light, I think.

Mr. DAVIS.—Exactly; more dark than light, and did you hear anybody say anything to this man about going into the steerage?

A. No, sir, I didn't.

Q. Did you hear him have any conversation with the bos'n, between Peneyra and the bos'n?

A. I did not, sir.

Q. Now, they brought him up out of the hold, eh?

A. Yes, sir.

Q. Who did?

A. It was a tall Hawaiian fellow and another man; I don't know him.

Q. Exactly; and did you see the condition of his head when they brought him up?

A. It was all bloody.

(Testimony of Valentine Cabache.)

Q. Of course it was; and then where did they take him?

A. They put him in a small boat and landed him at Nawiliwili.

Q. Have you seen him,—did you see him after that?

A. I saw him after that, because I was the one that took him to the insane asylum in town.

Q. You took him to the insane asylum?

A. Yes, sir, I did.

Q. Is he there now?      A. I don't know.

Q. But you took him there?

A. I took him there.

Q. Who ordered him committed there?

A. I was present at the trial, and he was ordered by the [52] district magistrate of Lihue to be admitted to the insane asylum.

Q. And you took the *mittimus* and delivered him there?

A. Yes, sir; I was a special police then for the county of Kauai.

Q. Has he got any children?

A. He has one child I know of.

Q. How old is it?

A. About five or six years, to my estimate.

Q. When you got down there in that batch between these decks you say you saw the first officer of the "Kinau"; did you see any sailors of the vessel around there?

A. I saw some men over there who were working for the steamer, or must have been, but I couldn't

(Testimony of Valentine Cabache.)

say whether they were sailors or not.

Q. Yes, and did you see the bos'n?

A. I don't know the bos'n.

Q. Were they loading freight in that hatch at that time? A. I didn't understand you, sir.

Q. Were they putting any freight down in that hatch just before the man fell down there?

Mr. WARREN.—I object to that as incompetent, because he just testified he wasn't there.

Mr. DAVIS.—Putting any freight down, did you say?

A. I didn't see any freight there.

Q. Either before or afterwards?

A. I couldn't state as to before, but while I was there I didn't see any. [53]

Q. And you didn't see any afterwards?

A. No.

Q. Did you come on up to Honolulu on that same trip? A. Yes, sir, I did.

Q. Did you see the captain of the vessel around there at that time?

A. I saw him, yes, sir, I saw him around,—you mean during the trip?

Q. Yes. A. Yes, sir.

Q. Did he say anything about the accident?

Mr. WARREN.—I object, too remote, and hearsay.

Mr. DAVIS.—You were on the upper deck before the accident happened?

A. Yes, sir, I was.

Q. And when you heard about it you rushed down?

(Testimony of Valentine Cabache.)

A. Yes, sir, I did.

Q. Who was it called your attention to it, do you know?

A. A fellow by the name of Pablo Sanches.

Q. Was the man's head badly injured, do you know?

A. I don't know, but it was covered with blood, his head was covered with blood.

Q. As to his condition, it has been suggested—was Peneyra sensible or insensible after the accident?

A. He was unconscious at the time he was taken from the hold.

Q. And what is the depth of that hold about, as near as you can give it?

A. It was quite dark over there, and I can't estimate very well, but I might say that it was about ten feet, I think, [54] ten or eight feet.

Q. And how wide was this hatch?

A. You mean the actual hatch?

Q. The opening.

A. Half of the hatch was covered at that time, and the actual opening must have been about two by five, I think, two feet or three feet by five feet.

Q. You took this man then to the Lihue hospital?

A. No, I did not.

Q. But you helped take him ashore?

A. No, I did not.

Q. But did you see him while he was in the hospital? A. No, sir, I did not.

Q. You didn't see him in the hospital?

(Testimony of Valentine Cabache.)

A. No, sir, I didn't see him in the hospital.

Q. Now, after you brought him to Honolulu after he was declared insane by the district magistrate of Lihue, did you have any conversation with him?

A. I tried to have, but he couldn't understand, and it seems to me as if he wasn't in his proper senses.

Q. He was insane, eh?      A. I should say.

Cross-examination of VALENTINE CABACHE.

Mr. WARREN.—You say you have known Peneyra four or five months?

A. Since the accident.

Q. That is all, since the accident?

A. Yes, sir. [55]

Q. Before the accident you don't remember ever having seen him?

A. I am very sure I didn't see him before.

Q. And when did you come on board, the same boat that Peneyra came on or an earlier boat?

A. I came in the boat ahead of Peneyra, I think.

Q. And did you see him come up to the upper deck at all?      A. I did not.

Q. You don't know yourself anything about him, you didn't see him in your life before that you know of, except after he fell?      A. Yes, sir.

Q. Have you any idea how long it was after the accident happened before you got downstairs to where he was?      A. No, sir, I don't know.

Q. Well, a matter of a minute, or two minutes, or three minutes?

A. I can't positively state how many.



(Testimony of Valentine Cabache.)

Q. Well, then, let me ask you this: When you got down there you say it was only about a half a minute more before they got the man lifted up.

A. Yes, sir.

Q. Now, were there men down there already lifting him when you got there?

A. You mean in the hold?

Q. In the hold, lifting him up already.

A. Yes, sir.

Q. Just where did you see him first, down in the bottom there or after he was lifted up in view out of the hatch? [56]

A. First I saw two men in the hatch, in the hold, and one of them was with the fellow who came up the ladder who took him up, lifted him up.

Q. They carried him part way up the ladder?

A. Yes, they lifted him up from the hold.

Q. They had a ladder, you say?

A. I don't remember whether they had a ladder or not.

Q. And when you first saw them did they have the man lifted up off the floor and hand him up when you first saw him?

A. When I first saw him I couldn't exactly state where was he, because it was dark in the hold and I could just see the outline of their being dressed in white contrasting with the darkness in the hold. I could just see their uniforms inside the hold, this man and Peneyra and the fellow who lifted him up.

Q. Now, how long had you been there before you say you heard the chief officer make this remark—

(Testimony of Valentine Cabache.)

you say a half a minute after you got there?

A. I would say two or three minutes.

Q. After you got there?

A. After I got there.

Q. That was two or three minutes after you got down there before the chief officer said that?

A. I didn't hear him make the remark until the man was in the small boat already.

Q. They got him clear out and got him in the small boat before the chief officer said that?

A. Yes, sir.

Q. Now, you say it was dark, or more dark than light; are you [57] referring now to the hatch or down in the hold, or to the steerage quarters?

A. I refer to the steerage quarters; of course the hold is darker than the steerage quarters.

Q. Now, how did you go from the upper deck to get down to the hatch at the lower deck,—just where did you have to go?

A. I went through the stair which runs down by the kitchen and through that hall there leading from that stair directly to the steerage quarters.

Q. Now, let me ask you; you go downstairs. After you get downstairs, did you go straight ahead or turn?

A. I was facing towards that direction when I come downstairs, and then I faced the opposite direction, when I got towards him.

Q. When you got to the bottom of the stairs and faced the opposite direction, had you walked along the passageway there?      A. Yes, sir.

(Testimony of Valentine Cabache.)

Q. How far?

A. Till I reached the steerage quarters, I am not very sure now.

Q. Well, ten or twelve feet?

A. More than that; it must have been about twenty feet.

Q. When you got to the end of the passageway is there a door between that passageway that opens from the passageway into the steerage quarters?

A. I don't remember whether there is a door or not, but there was an opening; there was an opening leading to the steerage [58] quarters.

Q. A doorway?      A. Yes, sir.

Q. You say when you got there there were some men working on the opposite side; you don't know whether they were sailors or not?

A. I didn't say they were working on the other side.

Q. Oh, what were they doing?

A. When I went down there they were all crowding around there.

Q. Did you see any signs there as though they had been working over there, any freight around?

A. I did not, sir.

Q. Was there any freight on the deck there around that hatchway, any freight piled up?

A. I don't remember; I just remember that there were people piled up around there; some were lying down already, steerage passengers laying down.

Q. But you don't remember seeing any freight or obstructions around the hatchway?

(Testimony of Valentine Cabache.)

A. No, sir, I did not.

Q. Now, how about the doors that opened out, the doors that opened at the side of the ship from the deck, were they opened or closed, any of them?

A. The port doors, you mean?

Q. Yes; were they open on the side of the ship to take freight in and out?

A. Yes, they were open on both sides.

Q. How big an opening?

Q. Probably ten feet by ten feet. [59]

Q. What time of day was it?

A. In the evening.

Q. About what time?

A. Between five and six, I think; I am not very sure.

Q. Were there any artificial lights, electric lights between-decks?

A. I don't remember if there were lights then or not.

Q. Any light coming in through the openings on the side, any daylight?

A. Yes, sir; it was still clear outside.

Q. Well, when you went down could you see well enough to see where you were going? You came downstairs and went along a little passageway and went through a doorway where you could see the hatch; was it light enough to walk around there to see where you were going?

A. Well, from the upper deck till I reached the lower deck it was clear enough for me to look in there, but when I arrived at the steerage quarters

(Testimony of Valentine Cabache.)

I didn't notice,—I mean I couldn't distinguish whether the hatch was closed or not.

Q. Well, you say you saw it partly open; you say it was two or three feet wide.

A. When I looked down I saw these men; I saw this man and two forms down there, as I stated before, their clothing contrasted with the darkness in the hold and I could easily see them in the hold.

Q. You haven't seen this man Peneyra since you took him to the hospital? A. No, sir, never did.

Mr. WARREN.—That is all. [60]

### Testimony of Pablo Sanchez, for Libellant.

Direct examination of PABLO SANCHEZ, for libellant, sworn.

Mr. DAVIS.—What is your name?

A. Pablo Sanchez.

Q. Where do you reside?

A. Schofield Barracks.

Q. Did you know Antalio Peneyra?

A. Yes, I know him on the steamer on the day, December 19, 1917.

Q. Was you a passenger on the "Kinau" on that day? A. Yes, sir.

Q. Where were you coming from?

A. I came from Kona side, about three o'clock in the afternoon.

Q. Did you see the accident that happened to him?

A. Yes, sir.

Q. On board the steamer, where was it?

A. Nawailiwili, on "Kinau" steamer.

(Testimony of Pablo Sanchez.)

Q. Where were you when he fell down the hold—  
did anything happen to him?

A. Yes, he fell down through the hatch.

Q. Where were you at the time?

A. I was there on the steamer at that time.

Q. Standing near him?

A. Yes, I was standing near him.

Q. Just tell the Court how it happened without  
any leading from me.

A. Well, the second officer told him to move back  
a little further because they were loading crates of  
chickens. [61]

Q. Did he shove him?

Mr. WARREN.—Objected to as leading.

Mr. DAVIS.—What did he do to him at the time?

Mr. WARREN.—Objected to as leading.

A. I believe he was much excited and he moved  
back and right at the same time he fell inside the  
hatch.

Mr. DAVIS.—Did the officer do anything to him  
before he fell in that hatch?

Mr. WARREN.—Object to that as leading.

The COURT.—I don't think that is leading; an-  
swer the question.

Mr. DAVIS.—What did the officer do to him at  
the time?

A. No.

The COURT.—You asked him did he do anything  
to him at the time.

Mr. DAVIS.—Where was Peneyra standing with

(Testimony of Pablo Sanchez.)

reference to the hatch when the officers told him to step back?

A. It's about six feet far from the hatch.

Q. How did he have his hand when he told him to move back?

A. He kept his hand like that, and said, "Move back, you fellows."

Q. Was Peneyra's back to this hatch there?

A. About two steps back; then he fell inside the hatch.

Q. Was his back to the hatch, or his face?

A. Back to the hatch.

Q. And he did move back?

A. He did move back, about two feet backward.

Q. Did you hear any person order Peneyra to go down to the steerage?

A. Yes, the second officer told him to go back, because the [62] second officer ask him if he know how to talk English, or can he understand what the officer said, and the officer told him to go down, and he went right straight down and carried his bag with him right where I stayed, and after that the officer told me to explain to all these boys that any passengers that had tickets must stay here and wait for purser.

Q. He ordered him back; was he trying to get upstairs then?

A. No, he just moved back about two steps and fell inside the hatch.

Q. Well, was Peneyra trying to go upstairs, or what was he doing?

(Testimony of Pablo Sanchez.)

A. He been upstairs already.

Q. Was he trying to come back?

A. Officer told him to get back because they was bringing on some crates of chickens, might get hurt, and as the officer told him move back he moved two steps back and at the same time fell in the hatch.

Q. Where was the crate of chickens—in front of him? A. In front of him.

Q. How far from him?

A. From here to the corner of that table.

Q. Now, how was it there—was it light or dark there? A. It was awful dark.

Q. And it was when the officer gave that command to move back that he fell down the hatch?

A. Yes, sir.

Q. How far did he fall—what's the distance as near as you can judge, how deep was it? [63]

A. I think it must be as high as this; I think from that side, I think.

Q. How many feet?

A. About sixteen or fifteen feet, I think.

Mr. WARREN.—Pointing to the top of the green wall, are you?

A. No, to the light.

Mr. WARREN.—I should say that would be about twelve feet, your Honor.

Mr. DAVIS.—About twelve feet there.

The COURT.—Estimate it in feet, how many feet would you say he fell.

A. I don't know how many feet it was, and I understand it was as high as that.



(Testimony of Pablo Sanchez.)

Mr. DAVIS.—Now, with reference—I want to find out, I don't know whether it's clear to his Honor, Judge Vaughan, or not, about this ticket business. Did the purser—he told them they would have to stay there until the purser collected the tickets?

A. Yes, the second officer told him to stay there until the purser collected the tickets, and he did so, and after that he ordered him to move back, by the second officer.

Q. Yes, but in the first place he ordered them to stay there between-decks and not to go upstairs until the tickets had been collected? A. Yes, sir.

Q. And now is this the place for the first-class passengers down there, or the second?

Mr. WARREN.—Objected to that, your Honor, as immaterial. [64]

The COURT.—Did the man have a right to be where he was, is there any dispute about that?

Mr. WARREN.—No.

The COURT.—Overrule the objection; I will admit the testimony. Read the question.

(Last question read.)

A. That was the third-class passengers' place.

Mr. DAVIS.—And who ordered this man Peneyra to stay there?

A. The second officer.

Q. Yes, and then he ordered him back?

A. Yes, told him to move back.

Q. And it was then that he fell?

A. Yes, in the hold.

(Testimony of Pablo Sanchez.)

Q. Were you present when the man was taken up out of the hold?     A. Yes, I was present there.

Q. Just describe his condition without any leading from me, how was he.

A. From what I understand he don't know anything, just like dead, blood coming out from his nose and mouth and from his ears and also from his head.

Q. Was he conscious or unconscious?

A. Unconscious, you know, he don't know anything; couldn't talk, and he couldn't do anything; just like dead.

Q. Who took him ashore?

A. Well, the boys working on the steamer, the crew.

Q. Did you help?     A. No, I didn't help.

Q. Did they take him ashore in a small boat?

A. Yes.

Q. Did you see him afterwards?     [65]

A. No, I went right straight to Honolulu.

Q. See him here in the insane asylum?

A. No, I didn't visit it.

Q. And that's all you know about it?     A. Yes.

Mr. DAVIS.—That's all.

Cross-examination of PABLO SANCHEZ.

Mr. WARREN.—Were you a third-class passenger?     A. Yes, sir.

Q. When did you go down in the steerage quarters?

A. I went down on three o'clock from Kona landing and went right straight to Nawiliwili landing

(Testimony of Pablo Sanchez.)

and reached over there about five o'clock or half-past five.

Q. No, I asked you when did you go into the steerage quarters?     A. The December 19th?

Q. Yes.     A. 1917.

Q. No; when you went on board the ship that time—     A. Yes.

Q. —where did you go first?

A. I go right straight to third-class place.

Q. To the third-class quarters?     A. Yes.

Q. You were a third-class passenger, were you?

A. Yes, sir.

Q. And you waited there all the time?

A. Yes, I staying there all the time. [66]

Q. Where were you standing?

A. Just walking all around there, on the third-class place.

Q. And they were loading freight in there?

A. Loading freight and some mails and crates of chickens and all other things.

Q. Taking it in through the side of the ship?

A. Yes, taking it in through the side of the ship.

Q. And what were they doing with it,—were they putting it down in the hold or putting it on deck?

A. No, just put the mail inside the hold and these boxes and crates of chickens they put outside.

Q. Around the hatch?

A. Way behind, far from the hatch, about six or seven feet away from the hatch.

Q. And how large an opening was there in the hatch?

(Testimony of Pablo Sanchez.)

A. About from this side to that place over there, halfway open, you see.

Q. About six feet long?

A. From this place to that post.

Mr. WARREN.—About six feet, your Honor, or seven feet?

The COURT.—Yes, about seven feet.

Mr. WARREN.—And how wide?

A. From this place to this place here.

Q. That is about nine or ten feet?

A. Yes, I think so.

Q. Where were you when Peneyra came to the steerage quarters the first time, did you see him come down? A. Yes.

Q. When he came, did he come through the door?  
[67]

A. Yes, because the second officer told me to advise all these passengers who come to the steamer to stay where they are till the purser take their tickets, and I told these boys to stay where they are and wait for the purser to take their tickets.

Q. Did you tell Peneyra?

A. I told Peneyra to stay where you are and wait for purser.

Q. Did you tell it to any of the boys before Peneyra came down? A. Yes.

Q. You told it to each one as he came in?

A. Yes.

Q. Where did they stay?

A. In the same place.

Q. All in the same place? A. Yes, sir.

(Testimony of Pablo Sanchez.)

Q. How far from the hatch?

A. Well, all around, you see?

Q. All around the hatch?

A. All around the hatch.

Q. And where was Peneyra when you told him?

A. He was near the hatch, you see, about three or four feet from the hatch.

Q. Now, was he on one side of the hatch, or back of it, or in front of it?

A. In front of the hatch.

Q. In front of the hatch?      A. Yes, sir.

Q. In front, toward the front end of the boat?

A. In front of the hatch; you see, the door open here, one hold where we pass cargoes, you see, he was facing to that place, and back to him was the hatch.

Q. How long had he been in there before the accident? [68]      A. You mean how long I been?

Q. No, after he came in there, before the accident.

A. Not very long; I think about fifteen minutes.

Q. He was there fifteen minutes?

A. Yes.

Q. Did he stay in the same place or walk around?

A. Same place.

Q. Move around with the other Filipinos?

A. No, he didn't move, right in the same place.

Q. What way was he facing on the ship, toward one side, or the front, or toward the back?

A. Toward one side of the ship.

Q. Then was he on one side of the hatch?

A. Yes, because the hatch is square like that, you see, and this hold over here on the side of the ship,

(Testimony of Pablo Sanchez.)

and he was facing like that, and one side of the hatch was open like that, you see.

Q. Which side of the ship was he looking towards?

A. Looking left-hand side.

Q. And he was on the left-hand side?

A. Yes, he was on the left-hand side.

Q. Where did that crate of chickens come from? Did they take it through the port?

A. Yes, just like this, small hole, and they take these crates of chickens with the cargoes throwing the chickens up on the steamer.

Q. And they put the mail in there too?

A. They put the mail in the hatch, but the chickens outside.

Q. When did they put the mail in, before or after the chickens? [69] A. Before chickens?

Q. Accident, I mean, before or after the accident?

A. Before the accident.

Q. Now, you say the man you call the second officer made a motion to go back.

A. Yes, he told him to get back, like that, and he give him the motion.

Q. Did he say why?

A. He didn't say why.

Q. Did he say on account of moving the chickens?

A. He might mean that, but he said get back.

Q. But everybody could see that they were moving crates of chickens? A. Yes.

Q. When he made that motion to get back was he talking to any particular person or anybody who happened to be too close?

(Testimony of Pablo Sanchez.)

A. He was just talking to me, the second officer was talking to me.

Q. He made the motion to you to get back?

A. Yes, he give me the motion, and after that he told me to explain to these boys who didn't understand that, to move back on account might get hurt.

Q. Did you explain to him?

A. Yes, to some of the boys.

Q. Did you explain to Peneyra?

A. No, I didn't tell anything to Peneyra, because at the time he saw the motion to move back and he moved back already.

Q. And after he moved back then you explained to the others, [70] is that right?

A. I explained before Peneyra fell in the hatch, and I explained to the rest of the boys not to be near to that hatch, might get hurt or something else.

Q. You made that explanation to the other boys before the accident, that the man told them to get back, and you explained to them to get back?

A. Yes, I explained to rest of the boys before accident happened, and after that Peneyra moved back and at the same time he fell in hatch. I had no time to explain to Peneyra because he was in the hold already.

Q. You had already explained to the other boys?

A. Yes, sir.

Q. Were any of the other boys nearer the hatch than Peneyra, he the nearest?

A. He was nearest boy.

Q. And did you see him when you explained to

(Testimony of Pablo Sanchez.)

the other boys, was he there?

A. He was there.

Q. How far away from you?

A. Two feet or three feet; like that.

Q. Did you talk in a voice loud enough for the other boy to hear you?

A. I was little further away from him, but he was standing with his baby and hold baby in his hand.

Q. He held a baby in his hand? A. Yes.

Q. How old was the baby?

A. Well, about six or seven years old. [71]

Q. Did he carry it up in his arms?

A. Like that, baby standing, he was sitting down, you see, and hold baby like that, and baby standing up.

Q. Who was sitting down? A. Peneyra.

Q. Holding the baby? A. Yes, holding baby.

Q. And she was standing up?

A. Baby was standing up.

Q. When did she come down there, same time he came?

A. Yes, they come together at the same time.

Q. Did you have any talk with him at all before the accident? A. No.

Q. You did not say anything to him?

A. No, I didn't say anything to him.

Q. You don't know why he came down there?

A. No.

Q. How long was it after the man you call the second officer made that motion to get back, how long after he made that motion and said that did you ex-



(Testimony of Pablo Sanchez.)

plain to the other boys about getting back?

A. The time the second officer gave sign like that and tell me to explain to the rest of the boys and I move outside and talk to rest of the boys, and not very long after that I hear Peneyra fall in hatch already so I didn't finish all my explanation and I run where Peneyra fall down, and on account of my excitement I run upstairs and call two officers from Lihue which was on the steamer "Kinau."

Q. When you explained to the boys to get back did you call out loud enough for the men around there to hear you? A. Yes, I do. [72]

Q. Were any of these boys further away from you than Peneyra, or closer?

A. I was little further from Peneyra, and rest of boys near to me.

Q. A couple of feet further?

A. Oh, about from this side to that third chair over there.

Mr. WARREN.—Ten feet, your Honor?

The COURT.—Twelve feet, or fourteen.

Mr. WARREN.—You didn't call to him at all?

A. You mean Peneyra, sir?

Q. Yes. A. No.

Q. You did not try to warn him to get back?

A. No, sir.

Q. Was it as much as a half a minute from the time the officer gave that order and made that motion, as much as half a minute before Peneyra fell down?

A. Well, the moment the second officer give the

(Testimony of Pablo Sanchez.)

sign and give motion to move back, he stand up and move back, and right about two steps back he fall right in hatch. I don't know how many minutes or seconds he went down.

Q. No lights in there, you say?

A. There is no light.

Q. No electric light, you mean?

A. There is electric light, but not lighted.

Q. Not lit? A. Not light.

Q. And what time of day was this accident?

A. It was between five and six o'clock.

Q. Was it light or dark outside?

A. Well, it is not very light, but more dark than light. [73]

Q. When was it that you explained to Peneyra that the officer wanted him to wait there until his ticket was taken up—how long after he came in?

A. About fifteen minutes.

Q. About fifteen minutes after he came in before you told him?

A. Second officer tell me to explain to all boys to wait for purser to collect their tickets, so I go all around to these boys and tell them they don't have to go moving but wait for purser to get your tickets, and I met Peneyra right near the hatch sitting down and I tell him wait for purser, about fifteen minutes.

Q. Peneyra had been there fifteen minutes before you told him?

A. Yes, before I told him,—no,—

Q. Did you tell him as soon as he came down?

A. Soon as he come to steamer tell him to stay,

(Testimony of Pablo Sanchez.)

same place where he was and wait for purser to collect ticket.

Q. How did Peneyra get to that place—through the door or through the side of the ship?

A. Through side of ship.

Q. Did you see him come in? A. Yes.

Q. Did you see him come off the ladder into the side of the ship? A. Yes.

Q. Did the little girl come with him right through that place?

A. Yes, Peneyra holding little girl by her hand.

Q. Did he have any baggage?

A. No, he didn't have any baggage.

Q. When he came he didn't have any baggage?

[74] A. No.

Q. You saw him yourself come up the steps and go through the side of the ship? A. I did.

Q. Well, did Peneyra go to the upper deck at all?

A. I didn't see him to go to the upper deck.

Q. Well, you don't know?

A. Well, I don't know.

Q. He may have gone out of there and then come back.

A. I didn't see him go around; just the time I saw him go up the stepladder and go in the hole and go right straight in, and I talked to him on the deck to stay the same place where you are now, and he just walk around and sit down near the hatch and right in the same place, and he stay, and about fifteen minute later officer give sign to move back all the fellows staying near Peneyra because they might

(Testimony of Pablo Sanchez.)

get hurt on account of all this crews throwing mails and chickens on the steamers.

Q. All right; when he came on, where did he go, as soon as he got inside the ship off the ladder, where did he go?

A. He walked around like that and sit down near the hatch.

Q. When did you speak to him, before he sat down? A. Before he sit down.

Q. How far did he walk after you told him?

A. Not very far; he just walk around like that, you see, from the hole where we used to pass going inside the steamer and he go right like that.

Q. He walked around the hatch to the other side?

A. To the other side here. [75]

Q. And where you told him was right where he came on board?

A. Yes, when he come on board ship.

Q. What did Peneyra look like?

A. He is old man.

Q. How old?

A. Well, I don't know how old he is.

Q. Can you describe him at all?

A. Well, he got his face wrinkled.

Q. What else?

A. And on this side here he got no teeth.

Q. On the right side no teeth? A. Yes.

Q. Now, from the time he came in you told him to stay where he was and he walked around the hatch and sat down? A. Yes.

Q. Did he move away from there after that?

(Testimony of Pablo Sanchez.)

A. No, sir.

Q. Then you will swear he was not up on the upper deck at all? A. I didn't see him go on upper deck.

Q. Well, do you say he did not move from there after he sat down there, he stayed there?

A. He stayed there.

Q. Did you see him there all the time?

A. I saw him until the time he fall down in the hatch.

Q. All up to that time you saw him there?

A. Yes, sir.

Q. Did his little girl go upstairs at all or stay with him all the time?

A. Yes, she stay with him until the moment until the old man fall down in the hold. [76]

Q. Did Peneyra go walking around asking questions about anything?

A. I didn't see him walking around and asking anything of anybody.

Q. Did you hear him ask questions of anybody about anything? A. No, sir.

Q. He stayed right in one place?

A. He stay right in the same place where he are.

Q. Did he talk to anybody near him that you know of?

A. No, because he didn't talk them kind of languages; he talk his own language; no fellow on the steamer who could talk his language.

Q. Any Filipinos?

A. Yes, he got different dialects.

(Testimony of Pablo Sanchez.)

Q. Did Peneyra say anything to you about his ticket?

A. No, he didn't say to me anything about his ticket.

Mr. WARREN.—That is all.

Mr. DAVIS.—I want to have entered here on the record that it is admitted by the third paragraph of the answer that the claimant further admits that it is a common carrier of freight and passengers by water, within the jurisdiction of this Honorable Court; also that it appears by the first paragraph of the answer that the libellant, Anatalio Peneyra, named on his passage ticket as—purchased a ticket, a first-class passage on said steamship “Kinau” on or about the 19th of December, 1917, from Nawiliwili to the port of Honolulu, and was carried and received on board said vessel as such passenger, that is as far as the admission goes there, was carried to and received on [77] board said vessel. I want that to appear in the record. [78]

*In the United States District Court, in and for the  
Territory of Hawaii.*

AD. 172.

ANATALIO PENEYRA, an Insane Person, by  
ADRIANO BORHA, His Guardian Ad  
Litem,

Libellant,

vs.

The American Steamship "KINAU," Her Engines,  
Machinery, Boilers, Tackle, Boats, Furniture  
and Appurtenances,

Libellee.

Honolulu, H. T., April 23, 1918.

2:00 P. M.

Mr. WARREN.—Perhaps I should have stated, your Honor, I understand from Mr. Davis that he has still some proof he wishes to put in and close his case, but that the defense will now go on.

Mr. DAVIS.—All the proof with reference to his injury is now in, except that I may have some rebuttal testimony.

The COURT.—Yes, that is all right; go ahead.  
[79]

**Testimony of John Wailiula, for Libellee.**

Direct examination of JOHN WAILIULA, for libellee, sworn.

Mr. JAMES HAKUOLE, sworn as Hawaiian interpreter.

Mr. WARREN.—(Through Interpreter.) Where

(Testimony of John Wailiula.)

were you working on December 19th last,—were you an employee of the steamship “Kinau”?

A. On “Kinau”; yes, sir.

Q. What is your position on the crew?

A. Bos’n.

Q. Do you remember the time an accident happened to a Filipino who fell into the hatch in the after-hold there? A. Yes, sir.

Q. Where was that, where was the steamer at the time? A. In Nawiliwili.

Q. What were you doing and where were you at the time of the accident?

A. On a certain corner near the hatch.

Q. What deck?

A. That is where the deck passengers usually stay.

Q. Is that called the steerage? A. Yes.

Q. Now, did you have anything to do with helping to get the man up out of the hatch after he had fallen in? A. Yes.

Q. What did you do?

A. I helped him get out of the hold, he being at that time,— [80] he was being lifted out by two other men in the hold, and I was on top and lifted him out of the hold.

Q. When did you first see that man that day?

A. By the gangway.

Q. Tell us about that, what was he doing?

A. He and the others had just got out of the boat and was walking along the gangway when I saw him, and he was going up.

Q. Now, after he got out of the boat and got on the



(Testimony of John Wailiula.)

gangway, where did he go?

A. He was going up to the cabin.

Q. Upper deck? A. Upper deck.

Q. When did you next see him after that?

A. I next saw hiw in the hold, he having fallen down.

Q. Now, just before that accident happened, what were you doing?

A. I was clearing the steerage so as to get the trunks and other packages out of the place.

Q. Out of what place?

A. Oh, so that the packages in the boat could be lifted there on to the steerage.

Q. Where was the boat?

A. The boat was on the port side of the steamer.

Q. And where were these trunks and other baggage to be put in?

A. Oh, these were packages which were brought from shore and on the boat were to be taken out of the boat and in to the hatch where this Filipino had fallen.

Q. Now, when you refer to the boat there, do you refer to the small boat that goes between the shore and steamer, the [81] freight boat? A. Yes.

Q. Now, in transporting the trunks and baggage from that small boat into the steamer and into the hatch, you say, on the port side, just how is that done from the boat to the hatch, how do they do it?

A. After we had gotten the passengers out of the boat and into the steamer I told the steerer of this small boat to change his location from that on the

(Testimony of John Wailiula.)

port side to the other side.

Q. The port side to the other side or the gangway side to the port side—which?

A. Oh, the boat first left the landing for the steamer and this little boat reached the steamer and stayed on the right side of the steamer. After the passengers had gotten on the steamer I told the steerer of the boat to go to the left side of the steamer preparatory to transferring these packages on the steamer.

Q. When the boat got around to that side of the steamer to transfer the packages, then how are the packages transferred from the boat to the steamer?

A. After we had got on to this side of the steamer I gave the order to lower the plank, to lower the plank, and I told the boatman to transfer the packages in the boat on to this plank and from there on to the main steamer.

Mr. WARREN.—Do you mind if I lead there a little to get at this plank business?

Mr. DAVIS.—No. [82]

Mr. WARREN.—Is that the platform or staging that leads out from the steamer?

A. This plank I refer to is commonly known by us—is commonly called the stage support held up by ropes on both sides of the stage.

Q. How far below the floor of the steerage deck is that staging?

A. It is a distance of from the top of this railing to the foot of it.

Mr. WARREN.—About three feet six or four feet.

(Testimony of John Wailiula.)

Q. Now, referring to the hatch inside where this man fell, is there any kind of a railing or guard around that hatch?

A. Yes, there is a sort of a chain around the hatch.

Q. How high from the deck?

A. It is the height from here to here.

Mr. WARREN.—Say about thirty inches.

Q. Now, at the time of the accident was there any such chain as that on the port side of the hatch?

A. No, it had been taken.

Q. Taken? A. Taken down.

Q. When had it been taken down?

A. At the very time I gave the order to transfer the packages into the hold, the hatch.

Q. Who took it down? A. I did.

Q. And what were the men down in the boat doing, if anything, with the baggage or trunk, at the time that accident happened?

A. When this accident occurred none of the packages in the boat [83] had been touched or taken or transferred.

Q. Well, what were the men doing down in the boat?

A. The crew in the boat was simply getting ready for the order to transfer the packages, but in the meantime the accident had occurred. When they heard of it they came to the rescue.

Q. Yes. Now, you said that you had given orders or tried to clear the way for a passage in there for this baggage. How did you do that,—what did you do?

(Testimony of John Wailiula.)

A. I told them to clear the way verbally, the people.

Q. Who did you tell?

A. I told the deck passengers.

Q. At that time did you see this Filipino that fell right afterwards, did you see him at the time you asked the people to clear the way? A. No.

Q. To whom did you address that remark or request, to any particular person?

A. I gave that order to all who were present, the deck passengers.

Q. What distance is it from the hatch to the port door in the side of the ship?

A. From the—from this ewa railing of the witness-stand to the Court.

Mr. WARREN.—I should judge that to be from that railing to your Honor, say ten or twelve feet—no, ten feet.

Q. Besides asking or ordering the people to clear the way, did you do anything? [84] A. No.

Q. Did you make any signals or motions?

A. I simply motioned this way, telling them to clear the way, but I didn't actually touch them.

Mr. WARREN.—Witness makes a motion of separation with his arms.

Q. Now, immediately after you made that motion and asked them to clear the way, what did you do?

A. While I was making these motions of separation to the deck passengers, this man in question fell into the hatch, and I immediately went to help him.

Q. Did you see him fall? A. No.

(Testimony of John Wailiula.)

Q. Then how soon after you made that motion—well, I withdraw that. If you did not see him, where was your attention directed at that particular time?

A. My attention was directed to the deck passengers to whom I was addressing to clear the way.

Q. How far from where you were standing at that time was it to the place where the man fell in?

A. It was only two feet distance and the Filipino was in my rear.

Q. Oh, which way were you facing at the time he fell, the end toward the ship or toward the door looking out of the ship?

A. My attention was directed to the hold where the packages were to be transferred on the left side of the steamer.

Q. Was there any crate of chickens being handled there at that time? A. No, none. [85]

Q. Was there anybody—do you know whether there was anyone with this Filipino man at the time of the accident?

A. No, I couldn't say as to that because there were too many people there.

Q. Do you remember anything of a little girl going ashore with him afterward?

A. No, I didn't see the little girl, but I was told that she went ashore in another boat.

Q. After the accident and you had assisted in getting the man out of the hatch, what did you do with him?

A. We placed him in the boat and took him ashore.

(Testimony of John Wailiula.)

Q. What boat?

A. Into the boat where Pua was in charge of; Pua is downstairs.

Q. Is that the same boat or different from where the trunk was?     A. It was the same boat.

Q. Now, do you know anything of any order or direction having been given to that Filipino man to stay in the steerage or to go or not to go any particular place?     A. No, I do not.

Q. What about taking up their tickets,—is there any rule about that in the steerage?

A. The purser has charge of that matter.

Q. Well, do you know anything about that?

A. No, I do not.

Q. Now, at the time that accident happened did you pay any attention to the time of day, where the sun was?

A. I know it was afternoon, but I could not say as to what hour of the day. [86]

Q. Well, what about the sun,—did you pay any attention to where that was?

A. The sun was directly over the Pali, precipice near there.

Q. Could you see it, or had it gone behind the Pali?

A. No, the sun was visible at that time, just directly above the Pali.

Q. Now, can you give us an idea how high that Pali is compared with,—well, say Diamond Head or Punch Bowl?

A. Diamond Head and Punch Bowl are much

(Testimony of John Wailiula.)

lower than this Pali I have reference to.

Q. How far into Nawiliwili Bay was the "Kinau" lying at anchor at that time?

A. It was at some considerable distance from the beach but I couldn't say exact.

Q. Well, was it at the usual anchorage?

A. Yes.

Q. Now, how long did it take to get the man up out of the hatch and down into the boat?

A. It was less than five minutes; not quite five minutes.

Q. Now, at the time that accident happened, in that steerage hall was it light or dark?

A. It was light.

Q. Well, how light?

A. I think something like this, as light as this, because the sun had not disappeared beyond the hill, beyond the Pali.

Q. As light as this—you are meaning the light you see out of the windows now? A. Yes. [87]

Mr. WARREN.—Your Honor, may the record show that it is three forty-five at this time?

The COURT.—Yes.

Mr. WARREN.—Now, how long did it take, if you know, from the time the boat left the steamer with this man until it got to the landing?

A. It didn't take us ten minutes to reach the landing. There were four of us in the boat rowing and I was one of them.

Q. When you got ashore, what was done with him, did you notice?

(Testimony of John Wailiula.)

A. We lifted this Filipino out of the boat into an automobile and he was taken away.

Q. Now, coming back to the hold of the steamer where this accident happened, I want to ask you how big this port door is where this trunk and baggage was to come in, how wide open was that?

A. It is a big hole; the hole itself is a large one but there were two shutters to it.

Q. I am not speaking of the hatch, I am speaking of the doorway. Just compare it with that door behind you.

A. The width of that hole is about the same as from here to—about the size of that door.

Q. And how high—about the same?

A. Perhaps as high as this, but a man standing up straight couldn't pass through that hole unless he bent down a little.

Q. An ordinary man would have to stoop his head to go through? A. Have to stoop down a little.

Q. Now, you say there are two doors to that; is that right? [88] A. Yes.

Q. And how many of these doors were open?

A. These two doors were open.

Q. Now, on the other side of the ship what is there over there in the way of a door—I mean right opposite?

A. Yes, there is another hole about the same size, but that is reserved for the passengers.

Q. Yes, now was that open or shut?

A. Well, that door was shut after the passengers had gotten onto the steamer.



(Testimony of John Wailiula.)

Q. At the time of the accident was it open or shut?

A. It was being shut.

Q. Well, can he tell us whether it had been shut or was just going to be shut or actually being shut at the time? A. No, it was just being shut.

Q. Now, any electric lights in that steerage quarters? A. Yes.

Q. Were they lit or not?

A. I don't know about it.

Q. Who has charge of that deck in there?

A. I have charge.

Q. Well, how could you see them inside of that place at the time the accident happened?

A. Everything in this compartment could be seen easily excepting the rear portion of the storage, cold storage.

Mr. DAVIS.—What can be seen?

A. Anything in that compartment can be seen easily except the rear portion of the ice storage.

Mr. WARREN.—Was this Filipino man anywhere near that ice [89] storage place?

A. No.

Q. How far is it from that ice storage place to the place where this accident happened?

A. From that mauka waikiki post of the bench of the Court there to perhaps this corner.

Mr. WARREN.—What would you call that, your Honor, thirty-five feet?

The COURT.—I should think it would be about thirty.

Mr. WARREN.—Now, how far is this place where

(Testimony of John Wailiula.)

the Filipino had fallen into the hatch, to that open port door?

A. From where I am sitting to the Court, to where the Judge is sitting.

Mr. WARREN.—That is about what, your Honor?

The COURT.—About ten feet.

Mr. WARREN.—Oh, after that accident did you see the second officer around there anywhere?

A. The second officer had gone ashore at that time.

Q. Well, did you see any other officer of the ship in there right after the accident? A. Yes.

Q. What is his name? A. Kui.

Q. What is his position?

A. He is the third mate; it is a Hawaiian.

Q. Was he there, Kui?

A. Yes, he came there after the accident.

Q. Do you know a man named Otterson?

A. Kui, the third officer was at the bottom of this hold, of [90] the hatch, and the second officer whose name you mentioned there,—

Q. Otterson? A. Was on top.

Q. The first officer or the second officer?

A. The mate, he was on the main deck.

Q. Now, did you see Otterson right after the accident? A. Yes, sir, I did.

Q. Do you know whether Kui, whom you say was the third mate, was wearing a third mate's cap, or what kind of a cap, did you notice that?

A. Yes, he was wearing his officer's cap.

Q. Did you notice particularly that cap?

(Testimony of John Wailiula.)

A. Yes, he was wearing a black cap with his insignia in front in gold.

Q. Just his mate's cap; you did not read that cap particularly at that time? A. No, I did not.

Q. Now, right after that accident, did you hear any remarks made by any officer of that ship as to whose fault that was, that accident?

A. The mate gave me a scolding.

Q. What did he say?

A. He said I was careless, negligent.

Q. In what way?

A. Careless in not looking after the hatch.

Q. Well, what more did he say?

A. That's all he said and then he went away—I went away.

Q. When did he say that? [91]

A. After the accident occurred, while we were helping the Filipino out of the hatch.

Q. Where had the mate been just before that?

A. He was standing up on the gangway looking down, watching what I was doing.

Q. Where were you?

A. I was at the foot of the gangway.

Q. Was this before or after the accident?

A. This was before the accident occurred.

Q. Was it while the passengers were coming on board or was it before they went around to the opposite side or afterwards?

A. We were in that position at the time when the passengers on the boat—when the passengers were changing places from the boat to the steamer.

(Testimony of John Wailiula.)

Q. Yes, so that after the passengers had come aboard the steamer and the boat had gone to the other side to take out the trunk and baggage, then where was the first officer?

A. Then the first officer came down to see what I was doing, what I was doing with these trunks and baggages.

Q. Was that before the accident?

A. This was before the accident happened.

Q. Now, was the first mate there at the time the accident happened?     A. Yes.

Q. At the time the accident happened?

A. I don't know whether the first mate was present at the scene of the accident, but what I do know is that he was [92] heading that way; he was coming towards that place when the accident happened.

Q. Then you mean he was in the steerage quarters? I am not talking about Kui at all; I am talking about Otterson.     A. Yes.

Q. Then you say that Otterson was in between-decks there at the time of the accident?

A. Otterson, the first officer, was at the top of the gang-plank after the passengers had come aboard.

Q. Yes.

A. After they came aboard he went downstairs and came towards where I was standing.

Q. Yes.

A. And before he got to where I was standing, the accident happened.

Q. So that to your recollection he was in the steerage quarters at that time, is what I want to know.

(Testimony of John Wailiula.)

A. Yes, that is the best of my recollection he was there.

Q. Where was Kui?

A. Kui was in front when he heard of the accident and rushed back in a hurry.

Q. In front where?

A. Fore hatch; that is where he was.

Q. Is that the same part of the ship or is it hidden from sight of the after part of the ship?

A. Hidden by the side of the boat.

Q. Was it the upper or lower deck where he was?

A. He was on the upper deck. [93]

Q. Now, when you took that chain down from the port side of the hatch, where was Otterson?

A. He didn't come there at that time; he hadn't got there.

Q. Had he gotten into the steerage quarters—was he in the steerage quarters when you took down the chain? A. No.

Q. When he came in what is the first thing he did?

A. He gave me a scolding for my action towards taking out the chain around the hatch.

Q. Was that before the accident happened or after the accident that he gave you the scolding about the chain?

A. My recollection is that as soon as he got to where I was standing and saw this chain unloosened the accident immediately happened followed by the scolding—then he give me the scolding.

Q. I want to find out when this scolding was—before or after the accident.

(Testimony of John Wailiula.)

Mr. DAVIS.—It has already been asked and answered, after the accident. I object.

The COURT.—Overrule it; I want to understand it.

A. This scolding happened before the accident.

Mr. WARREN.—How long before?

A. Very shortly before.

Q. How much time passed between the time you took the chain down and the time the accident happened?

A. If I am not mistaken it must have been two or three minutes.

Q. Now, I understood you to say that after he gave you the scolding he went away and you went away. Now, what do you mean by that, where did you go? [94]

A. After I got the scolding I went away.

Q. Where? A. In charge of the Filipino.

Q. In that couple of minutes between the time you took the chain down—pardon me, I will withdraw that. After Otterson, you say, gave you a scolding for taking down the chain, then what did he do?

A. He again put the chain around.

Q. He put it around? A. Yes.

Q. Did he put it around before or after the accident?

A. No, the accident had taken place before that time.

Q. What did Otterson do between the time he scolded you and the time of the accident?

(Testimony of John Wailiula.)

A. He didn't do anything, as far as I can remember.

Q. Where was he?

A. I last saw him after we took the injured Filipino from the hatch into the boat.

Q. I am asking what he did between the time he scolded you and the time the accident happened, in that interval.

Mr. DAVIS.—He already answered that; he said nothing. I submit the question has been asked and answered.

The COURT.—I will let him answer it again, though.

A. Otterson told me in the meantime not to be careful again—not to be careless again.

Mr. WARREN.—When did he tell you that,—after the accident?

A. That was after the accident.

Mr. WARREN.—Read the question, Mr. Reporter.

(Last question read as follows: I am asking what he did [95] between the time he scolded you and the time the accident happened, in that interval.)

A. What he did was to give assistance to the Filipino.

Mr. WARREN.—I'll give it up.

Mr. BANKS.—He made it pretty plain, I think.

Mr. WARREN.—The answer is not responsive in the slightest; he is talking about after the accident.

The COURT.—The question was, from the time

(Testimony of John Wailiula.)

he scolded up to the time the accident happened, what he was doing?

Mr. WARREN.—Yes, and now he is telling us that he assisted the Filipino afterwards.

Mr. DAVIS.—He said he did nothing; he answered the question.

A. What he did was to give assistance to the Filipino.

Mr. WARREN.—When he gave assistance to the Filipino, the Filipino had already fallen in the hatch, had he? Ask him. A. Yes.

Mr. WARREN.—All right, I give it up.

Q. When, as you say, Otterson said, "You are careless in taking down the chain," did you make any effort to put the chain up again?

Mr. DAVIS.—I object to it as leading; he is asking what he did and is suggesting an answer, and I object to it on that ground. Let's have a ruling.

The COURT.—I will certainly rule on it very promptly, Mr. Davis; I overrule the objection.

Mr. DAVIS.—Well, I submit the question is leading.

The COURT.—I don't think it is.

Mr. DAVIS.—I respectfully except and assign the same as error. [96]

The COURT.—Yes, but can't you do it without storming at me that way?

Mr. DAVIS.—Yes, your Honor; your Honor is mistaken.

The COURT.—You can except in a respectful manner and without attempting to display your tem-



(Testimony of John Wailiula.)

per. Read the last question again, Mr. Reporter.

(Last question read.)

A. Yes, I did.

Mr. WARREN.—What did you do about that?

Mr. BANKS.—Just a moment, Mr. Warren. Your Honor, please may I find out if this was after the accident?

Mr. WARREN.—I assume you are following the testimony, Judge Banks. I have just been rebuked for having an understanding about it.

Mr. BANKS.—I was going to make an objection, if your Honor please, if it was after the accident it would be immaterial what he did.

Mr. WARREN.—Was that effort you made to put up the chain, made before or after the accident?

Mr. BANKS.—Then my objection is withdrawn.

The COURT.—Go ahead.

Mr. WARREN.—I am asking for your best recollection.

A. To the best of my recollection, is that after the first mate gave me the scolding I immediately got busy and tried to put this chain back to its place. Whether the accident happened before I tried to put it back in its place, before or after I couldn't very well say it now, I am trying to brighten up my memory. [97]

Q. But you really cannot remember?

A. When the first mate gave me the scolding and told me to put the chain back to its place, I did so according to his order. No sooner had I done that than I turned around this way and there I saw the Filipino had fallen down in the hatch.

(Testimony of John Wailiula.)

Q. Well, now, had he fallen down there before you put the chain back or after you put the chain back?

A. Very shortly after I had put the chain back the accident happened.

Mr. WARREN.—You may cross-examine.

Cross-examination of JOHN WAILIULA.

Mr. DAVIS.—This is a rough plan here. Now, did the passengers that came from the shore, including the man that was injured, come on the starboard or port side of this vessel, here is the starboard and there is the port.

A. Starboard side.

Q. And where is this hatch, about in the middle, is it? A. Yes.

Q. And where was you loading freight, from the port side? A. Yes.

Q. Now, how many feet wide is the boat there,—that's right in the middle of the boat, isn't it, isn't the hatch right in the middle of the boat? How many feet on each side?

A. From where the Court is sitting to this railing. [98]

Q. Yes, and that's on each side of the hatch?

A. Yes.

Q. Now, will you swear positively that this chain was up before, that it was up when that Filipino fell down that hatch? A. Yes.

Q. You put it up, eh? A. Yes, I did.

Q. And how high was it? A. About that high.

Mr. WARREN.—About thirty inches?

Mr. DAVIS.—Yes.

Q. How did the mate come to scold you about be-

(Testimony of John Wailiula.)

ing careless and you put the chain up, can you explain that to the Court?

A. Because I had taken down the chain before that; before he gave me the scolding I took out the chain.

Q. It took you a long while to find out whether you put the chain up after the accident happened or before it happened?

A. No, it didn't take me very long to think about it.

Q. You did testify that the chain was down when the accident happened, didn't you, in answer to a question by Mr. Warren? A. I don't think I did.

Q. You don't think you did; well, are you sure about it, is your memory clear about it?

A. My memory is clear now.

Q. Yes, clear now, but it wasn't clear before.

A. I think I was confused before.

Q. Your memory is very clear about it now, eh?

A. I am in good shape.

Q. How high was the deck of this vessel right over this hatch? This was between-decks in the steerage, wasn't it, where [99] this accident happened?

A. Yes.

Q. And overhead how high is the deck up above, the ceiling of this deck, how high?

A. About that height. Sometimes we did painting on the deck too—

Q. Up to that picture; how many feet is that,—about seven and a half feet?

The COURT.—Seven and a half feet. About as high as you can reach?

(Testimony of John Wailiula.)

A. Yes.

Mr. DAVIS.—Do you admit seven and a half feet?

Mr. WARREN.—I think about eight.

Mr. DAVIS.—When you speak about doors that is on the side of the vessel, both the starboard and the port side, there is an iron door there, isn't there, one door that goes down, or are there two doors that shut?

A. Two doors.

Q. How wide is the space there where these passengers come on where the doors are?

A. About the width of this door.

Q. How many feet?

The COURT.—That is about four feet.

Mr. DAVIS.—Does he mean both doors?

A. Yes, sir.

Mr. WARREN.—I submit that is nearer six, your Honor, across these two doors.

The COURT.—Yes, I should think at least five and a half feet [100] across there.

Mr. DAVIS.—What time did this accident happen?

A. About three o'clock in the afternoon.

The COURT.—About five feet make it.

Mr. DAVIS.—You swear it was about three o'clock in the afternoon?

A. That is the best of my recollection.

Q. That's your recollection; that's the best recollection you got of it is that it was half-past three in the afternoon.

(Testimony of John Wailiula.)

A. It was between three and half-past three in the afternoon.

Q. And all the other witnesses here testified it was half-past six and now you testify half-past three.

Mr. WARREN.—I object to that, your Honor, that is not evidence.

The COURT.—It don't make any difference what the others have testified.

Mr. DAVIS.—Is your memory clear about that, that it was half-past three?

A. I am positively sure it was between three and half-past three in the afternoon.

Q. Between three and half-past three, and you are not sure about the electric lights being lit in there?

A. I don't think the electric lights had been lit.

Q. No; no trouble to read a newspaper in there, I suppose. A. Yes; no trouble at all.

Q. No; very light, eh, very light in there at that time? A. Yes, very light.

Q. When you took this man out of the hold, when you helped this Filipino out of the hold after the accident happened, [101] was he sensible or insensible?

A. I think he was insensible, because he didn't say a word; he didn't utter a word at all.

Q. Was he bleeding? A. A little bit.

Q. About the head and face?

A. Back of the head.

Q. Where was the first mate when you took him up? A. He was there.

Q. Was the third mate there also?

(Testimony of John Wailiula.)

A. Yes, he was there, and it was he who lifted this Filipino out of the hatch.

Q. How long have you been going to sea?

A. About twenty years.

Q. You are not sure whether the mate gave you that scolding before you put the chains up or after you put it up?

A. The accident happened after I put the chain up.

Q. I didn't ask you about the accident, I asked you about the scolding, read the question.

(Last question read.)

A. The scolding took place before I put the chains up.

Q. Before you put the chains up. How long after the chain was up—you didn't see the Filipino fall in this hatch? A. No.

Q. Then how long before you discovered that he was in the hold, how long a time elapsed between the putting up of the chain and the first you knew he was down in the hold?

A. Five minutes, perhaps, more or less.

Q. Yes, and did this chain go all around the hatch?

A. Yes, but it wasn't one long chain. Four different chains, [102] and all of them I put them back.

Q. I know, but there are four different chains, a set of chains on both ends of the hatch and on the starboard and port side?

A. Excepting one end of it, because there was a partition, a passage partition there.

(Testimony of John Wailiula.)

Q. But this hatch, I mean, there is only three chains then? A. Yes.

Q. And on one part of the hatch there is no chain at all? A. No, that's where the ice store is.

Q. I see, but there is no chain on one part of the hatch at all. A. No.

Q. Then it was on this side end—just point out there, will you, where the chains were?

A. This is where the ice storage is.

Q. No chains there,—mark X,—eh, no chain? Now, how did you put the three chains up?

A. Two chains were already up, and I only unloosened one.

Q. You unloosened this one here?

Mr. WARREN.—I object to the question because the record is not going to show that, and if counsel puts a figure down on a piece of paper and says "here," the answer of the witness is not going to make it so the Court reading the testimony could make anything out of it, or make anything out of it sitting where you are. I submit the question can be put without reference to the sketch.

The COURT.—Yes.

Mr. DAVIS.—I am going to use it. You can't direct me what kind of a paper I am going to have; I can look at this. [103]

Q. Was it the port side chain you put up or the starboard side chain? That will indicate it.

A. I unloosened the chain on the left side of the steamer.

Q. That is the port side? A. Port side.

(Testimony of John Wailiula.)

Q. Yes. And all this happened from the time of your putting up the chains and the time the Filipino happened to fall in there, there wasn't more than five minutes elapsed? A. Yes.

Q. Now, isn't it a fact—did the mate say anything to you about this scolding, about this Filipino being hurt?

A. I couldn't remember distinctly what he did say other than giving me a scolding.

Q. But didn't he say something about the Filipino being hurt at the time he gave you the scolding?

A. He didn't say anything to me after the Filipino had fallen in the hatch. It was time for us all to give help to the Filipino.

Q. Yes, but didn't he say something to you about the Filipino after it happened, after you brought him out of the hold?

A. No, he didn't say anything else except tell me to take the Filipino ashore.

Q. Was your back turned to the Filipino when he fell in there? A. My back was turned to him.

Q. And you was busy getting this baggage from the boat at the time? A. Yes.

Q. This boat was lying along the port side then?

A. Yes. [104]

Q. And your attention at the time the Filipino fell and the accident happened was directed to that business of getting this baggage from this boat?

A. Yes.

Q. And you were very busy and wasn't paying any attention to the Filipino?



(Testimony of John Wailiula.)

A. I did have some thought about the Filipino, but my attention was directed to the baggage more than anything else.

Q. And there was a lot of people standing around there at the time? A. Yes.

Q. How many people were around there—

Mr. WARREN.—I want to ask the interpreter if the witness in his last two answers did not speak of clearing the passages.

Mr. DAVIS.—But you are putting that in and interrupting my questioning.

Mr. WARREN.—This is a question of interpretation, your Honor, whether the interpreter has not inadvertently omitted part of the answer. I understand a little Hawaiian.

The INTERPRETER.—Yes, sir; the witness did say he was busy attending to looking after the boats as well as giving orders to the passengers to clear a way.

The COURT.—All right, go ahead.

Mr. DAVIS.—At the time you gave the order you didn't see the Filipino at all?

A. I didn't see that Filipino, of course there were several other Filipino there.

Q. Sure, and your back was then turned to them?  
[105]

A. Yes.

Q. How long have you been going to sea?

A. Twenty years.

Q. How big is this chain that goes around this hatch, how big around?

(Testimony of John Wailiula.)

A. Just like that chain over there.

Q. I mean how big,—is it like that big one over there holding that light, was it a half inch or an inch chain? A. I don't know, I didn't measure.

Q. You don't know what the mate said to this Filipino before the accident happened, do you?

A. If the mate said anything?

Q. Did he say anything to this Filipino before the accident happened?

A. I don't know whether he said anything to him or not.

Q. You don't know whether the third mate said anything to him before the accident happened?

A. I don't know whether they had a conversation or not.

Q. Then you really don't know what took place between the first mate and the third mate and this man that was injured, this Filipino?

Mr. WARREN.—I object to that question because it assumes something did take place, and there is no testimony upon which to found that.

Mr. DAVIS.—I said you don't know what took place, if anything did take place?

Mr. WARREN.—That is a different question.

A. No. [106]

Mr. DAVIS.—Do you know whether this Filipino had a first-class or a second-class ticket?

Mr. WARREN.—Object to that as not proper cross-examination, and it is also covered by the admissions of counsel in the case that he was a first-class passenger and had a first-class ticket.

(Testimony of John Wailiula.)

Mr. DAVIS.—I want to test his knowledge and see what he knows about it.

Mr. WARREN.—If you want to make him your witness, you may, but that is not proper cross-examination.

The COURT.—He didn't ask him what kind of a passenger he was; he didn't say anything about that.

Mr. DAVIS.—He was in the steerage quarters at the time this man was, this Filipino.

A. He was a cabin passenger.

Q. I know, but he was between-decks, I didn't ask him that. A. Yes.

Q. He was between-decks, and you at no time seen him in the first-class passengers' quarters?

A. After I allowed the passengers to go aboard I don't know what happened afterward.

Q. Yes, and all the time you saw him it was in the steerage quarters?

A. I know that this Filipino went upstairs and remained on the cabin.

Q. And then came down again?

A. Perhaps he came down again; I don't know when he came down.

Q. Well, he must have come down before he fell?  
[107]

A. Perhaps so; I don't know about that.

Q. When you took hold of this Filipino to lift him out of the hold, was the chain up or down on that hatch? A. The chain was up.

Q. You didn't take it down to lift him out?

A. No.

(Testimony of John Wailiula.)

Q. The chain was up?     A. The chain was up.

Q. Well, have you any idea how the man fell in, then, if the chain was up?

A. My idea is perhaps he went over there to look down and owing to the rolling of the steamer it knocked him down in the hatch.

Q. You didn't see him looking in there?

A. No, I did not.

Q. No, if he fell in backwards he couldn't have been looking in there.     A. No, he couldn't have.

Mr. DAVIS.—That's all.

Mr. WARREN.—That is all.

The COURT.—We will adjourn until then, until to-morrow afternoon at two o'clock.

The Court then adjourned to 2:00 P. M., April 24, 1918. [108]

*In the United States District Court, in and for the  
Territory of Hawaii.*

AD. 172.

ANATALIO PENEYRA, an Insane Person, by  
ADRIANO BORHA, His Guardian Ad Litem,  
Libellant,

vs.

The American Steamship "KINAU" Her Engines,  
Machinery, Boilers, Tackle, Boats, Furniture  
and Appurtenances,

Libellee.

Honolulu, H. T., April 24, 1918,  
2:00 P. M.

**Testimony of Kui Lobo, for Libellee.**

Direct examination of KUI LOBO, for libellee, sworn.

Mr. WARREN.—(Through interpreter, Mr. Hakuole.) Q. You are employed on the Inter-Island steamship "Kinau," you were employed on that vessel in the month of December last? A. Yes.

Q. On the trip when a Filipino fell into the hatch in the steerage quarters? [109] A. Yes.

Q. What was your position on the boat at that time?

A. Ordinarily I was third mate on the steamer, but on that particular trip I did not have my third mate's cap.

Q. What cap were you wearing?

A. A cap with the brand of second officer in front?

Q. Where were you when you first heard of that accident?

A. I was in the after part of the ship at that time, but I didn't know or hear of the accident. The first mate told me to go forward and I did in obedience of his orders.

Q. Now, where were you when you first heard of the accident?

A. I was in front hauling on the deck, an automobile on the deck.

Q. Who told you about it?

A. The quartermaster.

Q. What did you do?

(Testimony of Kui Lobo.)

A. When I heard of it I ran in the after part of the steamer and looked down and saw this Filipino had fallen.

Q. That was down in the hatch in the steerage quarters?     A. Yes.

Q. What next did you do?

A. I went down and got him, and when I looked up and when I saw the first mate standing above I handed the man to him.

Q. At the time you went down into the hatch did you notice whether or not there were any chains around it?

Mr. DAVIS.—I object to that as leading and suggesting an answer.

The COURT.—Overruled.

Mr. DAVIS.—Exception, your Honor. [110]

A. When I heard of this accident and upon learning that a man had been injured in that hatch, I ran down without paying attention or looking around to see whether there was anything else there. My attention was directed to the injured person, and so I jumped down.

Mr. WARREN.—Q. So you don't remember whether there were or not?

A. No, I couldn't remember.

Q. Do you recollect whether that hatch was entirely open or partly covered?

A. The port side was open; the starboard side closed.

Q. About how much, how much was closed and how much open?

(Testimony of Kui Lobo.)

A. I don't know how much, but I know that half of that hatch, right side, was closed and the other side open.

Q. The right side is the starboard? A. Yes, sir.

Q. And port side the left? A. Yes.

Q. After you got that man up out of the hatch, what next did you do?

A. Then I lifted him up and went downstairs and put him on the boat and rowed ashore.

Q. Went downstairs—what do you mean?

A. Lifted him up on to the staging and down in the boat.

Q. To the stage. Did you lift him up to the stage or lower him down to the stage—where was the stage?

A. I first got this injured man out of the hatch on to the deck, where the first mate was. From there, having received an order from the mate, I took him down on to the stage and then down to the boat.

Q. Where was the stage, down below or above the port door. [111]

A. Below the port on the side of the steamer.

Q. Where that boat was down below with trunks and baggage in it? A. Yes, sir.

Q. Now, having lowered him into the boat, helped get him down into the boat, what did you do?

A. I went into my room and took off my shirt. It was smeared with blood, and I didn't want people to see that, and I went down into the boat—I didn't go down to the boat, but I went forward.

Q. What deck? A. Cabin deck.

(Testimony of Kui Lobo.)

Q. Upper deck? A. Upper deck.

Q. Now, did you at that time see anything of a little girl that had anything to do with this Filipino man?

A. Yes, I saw a little girl like that. I went up on the cabin deck above that deck and there I saw this little girl with a package of matting or mats.

Q. Where was she?

A. She was on the port side of the deck.

Q. Sitting down or standing up?

A. Sitting down.

Q. What did you do, if anything, with that little girl?

A. I went and told the steerer or wheelman to put her into a boat and send her ashore.

Q. Why?

A. Because she was unattended by parents. The only parents who was there was her father.

Q. Well, how did you understand that this little girl,—that it was her father who was hurt, how did you understand that? [112]

A. Because all these Filipinos told me about it.

Q. Filipinos other than the injured man?

A. Yes.

A. Q. All right. What was done with her—was she sent ashore, too? A. Yes.

Q. And now I want to ask you when you got down into the steerage deck there to help get that man out of the hatch, what was the condition in there—light or dark? A. Light.

Q. Well, just how light? Describe it.



(Testimony of Kui Lobo.)

A. It was so light that a man could see things there below.

Q. Below where? A. Below in the hatch.

Q. How many port doors are there on that deck, the steerage deck? A. Two.

Q. Where are they?

A. Port side one, and one on starboard side.

Q. How large are they?

A. I think about six feet in length, and four or five feet high.

Q. Were they open or shut at that time?

A. Open.

Q. How far is the port door on the port side from the hatch where this man had fallen in?

A. I think it is between six and eight feet.

Q. Where was the sun—above or below the horizon?

Mr. DAVIS.—I object on the grounds that it is leading; let [113] him say what time it was.

Mr. WARREN.—I am willing to meet counsel on that and ask him where was the sun at the time of the accident, if you noticed?

A. I didn't look at the sun, but the light of the sun was in such a position that the size of the precipice in that vicinity could be seen.

Q. Just explain that a little better; I don't quite get that.

A. The light of the sun on the port side reflected in such a way on the Pali or precipice that the precipice could be seen.

(Testimony of Kui Lobo.)

Q. Precipice on which side of the boat, port or starboard?

A. Port side. There are Palis on both sides as the steamer enters the harbor, but as she anchored the Pali was on the port side.

Q. Now, where was the sun, on which side of that Pali?

A. The Pali is quite high, slanting down over, and the sun was on the west side of the highest point of that Pali.

Q. Now, could you see the sun?

A. I could see the sunlight, not the sun itself; the sun itself having descended beyond the Pali.

Q. Now, if that Pali were not intervening between the boat and sun, can you tell us about how far the sun would be above the horizon, of the water?

Mr. DAVIS.—That is objected to as leading and suggestive, and has already been answered.

The COURT.—He has not yet found how high it was above the horizon. Go ahead. [114]

Mr. WARREN.—Let me put it another way: Where was the sun with respect to the horizon, water line of the sea?

Mr. DAVIS.—I object to that on the same grounds.

The COURT.—Overrule the objection.

A. The sun was not visible at that time on account of the Pali intervening between the sun and the steamer, but I could see the sunset—the light of the sun, of the sunset, I could see the light of the sunset.

Mr. WARREN.—Q. Have you any recollection—can you try and tell us what time of day it was by

(Testimony of Kui Lobo.)

the clock, have you any idea of that, when the accident happened?

A. It was between five and six o'clock.

Q. Can you place it any nearer than that, was it nearer five than six?

Mr. DAVIS.—I object most strenuously.

Mr. WARREN.—Or nearer six o'clock?

A. It was after five—between five o'clock and six o'clock.

Q. Well, was it more than half after five or less than half after five?

Mr. DAVIS.—Object on the same grounds, and the question is leading.

The COURT.—Overrule the objection.

Mr. DAVIS.—Exception.

A. I couldn't say as to that, but I can say I do remember that it happened—it was between five o'clock—it was after five o'clock and before six o'clock.

Mr. WARREN.—All right, you may cross-examine.

Mr. DAVIS.—No questions.

No cross-examination. [115]

### Testimony of C. M. Aika, for Libellee.

Direct examination of C. M. AIKA, for libellee, sworn.

Mr. WARREN.—(Through interpreter, Mr. HAKUOLE.) Q. Were you employed on board the Inter-Island steamship "Kinau" in the month of December last? A. Yes, sir.

(Testimony of C. M. Aika.)

Q. On the trip when a Filipino fell into a hatch in the steerage and got injured? A. Yes.

Q. Where were you working at the time of that accident?

A. I was on the steamer on the steerage, on the stage there.

Q. On the stage; where was that stage?

A. On the side of the steamer.

Q. How long had you been on that stage?

A. I had stood there five minutes before the boat—before the freight-boat reached the steamer.

Q. Yes, and just what were you preparing to do when the accident occurred?

A. I was standing there waiting for the freight-boat to come alongside the steamer.

Q. The accident happened before the freight-boat got below the stage or afterwards?

A. The boat was just coming alongside the steamer when this accident happened.

Q. Now, did you see this Filipino man fall into the hatch? [116] A. I didn't see him fall.

Q. What is the first you knew of the accident?

A. I heard from the Filipino passengers who said who called for help, that a man was injured, a Filipino was injured.

Q. And at that time you were on the platform, on the stage? A. Yes.

Q. What did you do?

A. Well, I rushed towards the hatch and went down until I got to the Filipino.

Q. Anybody else with you? A. Yes.

(Testimony of C. M. Aika.)

Q. Who was that? A. The boy sitting there.

Q. Kui Lobo? A. Yes.

Q. And when you got in there to go down the hatch to get the man out, did you notice whether or not there were any chains around the hatch?

Mr. DAVIS.—Objected to on the grounds that it is leading.

The COURT.—I don't think that is leading. It doesn't suggest which answer is desired.

Mr. DAVIS.—Will your Honor kindly allow me an exception?

The COURT.—Yes, sir.

A. I saw the chains were up, were there.

Mr. WARREN.—On how many sides of the hatch?

A. Four sides, all four.

Q. Now, at the time that accident happened did you notice whether it was light or dark in the steerage quarters?

A. It was light then, the sun was up.

Q. Where was the sun? [117]

A. The sun was above the mountain.

Q. How far above?

A. Quite high up, about the height of this room from the mountain.

Q. Can you give us an idea about what time of day it was, can you remember that at all?

A. I think it was between three and four o'clock.

Q. When you say it was light in there, tell us how light, how much could you see?

A. Anything in there could be seen.

Q. How many doors to that steerage deck?

(Testimony of C. M. Aika.)

A. Two.

Q. How high are they?

A. I suppose the width is about the width of that door.

Q. The doorway entrance to the courtroom; how high? A. Just about my height.

Q. Now, where are those doors?

A. By the sides of the steamers, one of which is for the use of the freight and the other for the passengers.

Q. Were they open or shut?

A. They were open at that time.

Q. Did you see anything of that Filipino man before he fell into the hatch? Did you take any notice of him before that, when he came on board?

A. No.

Mr. WARREN.—That is all, you may cross-examine. [118]

Cross-examination of C. M. AIKA.

Mr. DAVIS.—Now, this hatch, eh? That represents the hatch where that man fell down. Now, you testified there was chains around all four sides of that hatch.

A. Yes.

Q. No chain up here on the starboard side?

Mr. WARREN.—Wait, Mr. Davis,—

Mr. DAVIS.—No, I won't.

Mr. WARREN.—I object to counsel using a rough sketch.

Mr. DAVIS.—You are sure about that now, that

(Testimony of C. M. Aika.)

there were chains all around the four sides of this hatch?

A. Yes, sir.

Q. Now, you say it was between three and four o'clock that this accident happened? A. Yes.

Q. Now, you are sure about that?

A. I am sure of that, not mistaken.

Q. Yes, it wasn't after four o'clock? A. No.

Q. Did you see the Filipino when he was taken up out of the hold there?

A. Yes, I did, when he was being lifted out of the hold, the hatch.

Q. Now, wasn't you on the stage outside, wasn't you on the stage outside at the time that this accident happened, outside on the stage outside on the boat, on the side of the boat? [119]

A. I was standing on the stage outside of the steamer at the time of the accident.

Q. Yes, exactly.

A. But when I heard of this accident I came to his help.

Q. I didn't ask you if you come to his help; I simply asked you where you were at the time of the accident. Where was that stage,—on the port or starboard side of that steamer?

A. I don't know whether it was the port side, but the stage was—the stage was on the side where the freight-boat—where the freight comes up on board through the hole.

Q. Well, was it the port or starboard side, you ought to know that.

(Testimony of C. M. Aika.)

A. I am not familiar with that; perhaps it was the port side.

Q. All right; how many feet was it up? Was it forward of the port hole or was it aft of the port hole where this stage was?

A. It was above the port hole, not aft.

Q. It was on the forward—forward of the port hole?

Mr. WARREN.—Didn't he say malolo?

A. On the forward part of the steamer, on the side.

Mr. DAVIS.—Exactly; how many feet from the port hole?

A. As far as the Court is standing now, to where I am.

Q. Exactly; therefore you couldn't see in the steerage quarters between-decks at all from where you were standing?

A. Sure, I could have seen the quarters inside of the steamer, but my back was towards that, I was facing shore, outside, not inside.

Q. You couldn't see where you was standing on that stage, you [120] couldn't see in through the port into the steerage? A. Yes, I could.

Q. But your back was turned, you was facing the shore.

A. Yes, my back was to the shore, but I was watching the freight.

Mr. WARREN.—I am going to object to counsel offering sketches himself. I would ask the witness to make one himself.

(Argument.)



(Testimony of C. M. Aika.)

Mr. DAVIS.—All right; the sketch is withdrawn.

Q. I want to make it clear; you were on this stage at the time this accident happened, on the outside of the boat? A. Yes.

Q. Forward of the port hole? A. Yes.

Q. And facing the shore—

A. Forward of the port hole but near by the side.

Q. I know, but forward of it anyway, how many feet?

A. About the distance where the Court is sitting, to me.

Q. About seven feet from where his Honor is sitting?

The COURT.—No; about seven feet.

A. I think so.

Mr. DAVIS.—Exactly; and how long before that had you been in the steerage quarters where the hatch is and where this man fell down? How long before the accident happened had you been in the steerage and—we got you on the stage now, how many minutes before that were you in the steerage where this hatch was where this man fell down and where this accident happened?

Mr. WARREN.—I wish to object, that is not proper cross-examination. Your Honor will recall that the witness [121] testified on direct that he was on the stage and heard of the accident and went up to help.

A. You mean from the stage inside the quarters?

Mr. DAVIS.—How many minutes before were you inside?

(Testimony of C. M. Aika.)

A. I remember while I was standing out on the stage waiting for the boat containing the freight, I had not been down there, I suppose, five minutes.

Q. It was five minutes after you left inside that the accident happened, five or ten minutes, which?

A. Five minutes.

Q. Yes, and wasn't there plenty of time to take the chains down from the time you got in there until the accident happened?

Mr. WARREN.—I object; that is immaterial, and not proper cross-examination.

Mr. DAVIS.—Between the time he left inside there and went out on the stage?

Mr. WARREN.—While he was outside, you mean?

Mr. DAVIS.—Yes.

The COURT.—I think it is legitimate; go ahead.

Mr. DAVIS.—Wasn't there plenty of time to take the chains down from the time he left?

A. No, the chains couldn't be taken down then, couldn't be done so unless the freight was brought there and before hauled down in the hatch.

Q. Didn't it only require a man to unhook the chain?

A. Yes, ordinarily they do that if there is freight there; if there is no freight there they don't do it.

:[122]

Q. All I asked you is simply didn't they have to unhook it? Never mind about the freight.

A. You can't very well unhook that chain because the hook has two catches.

(Testimony of C. M. Aika.)

Q. How long does it take to unhook it?

A. Not very long if you were to do it.

Q. Now, just tell us how long, if you will.

A. About a half a minute.

Q. Yes; now, when you were in there your attention was not particularly directed to that hatch, there was nothing happened while you were inside?

A. No, my attention wasn't absolutely directed to that portion of it, because I was told to look after the freight.

Q. I didn't ask you that; I said nothing happened at that particular time to direct your attention to the hatch. A. No.

Q. The accident didn't happen till you got outside?

Mr. WARREN.—I submit that is all thoroughly covered, your Honor.

The COURT.—He says it happened while he was outside.

Mr. DAVIS.—Your attention wasn't particularly attracted—just state anything—withdraw that. Just state any reason why your attention was directed to these chains.

Mr. WARREN.—Before or after the accident?

Mr. DAVIS.—Before the accident.

Mr. WARREN.—Objected to as immaterial.

Mr. DAVIS.—State any reason, if you can, why your attention was particularly directed to these chains around that hatch [123] before the accident.

Mr. WARREN.—I object to it on the ground that

(Testimony of C. M. Aika.)

the witness testified there was no reason, and he didn't pay any attention before the accident.

The COURT.—He testified when he got back in there the chains were up on all four sides. I don't know that he said anything about whether he paid any attention to them before that time.

Mr. DAVIS.—I will ask him then: Was you paying any attention to these chains before the accident happened?

A. No, I didn't think of them because they were fastened tight before that.

Q. You had no reason, you didn't look, eh?

A. No.

Q. Now, I will give you another opportunity; you say the chains was all right around the hatch on all four sides of it?

Mr. WARREN.—When?

Mr. DAVIS.—Before the accident, before it happened.

Mr. WARREN.—He didn't testify that.

Mr. DAVIS.—On all four sides of the hatch, after the accident.

A. Yes, it was surrounded by chains.

Q. On four sides? A. On the four sides.

Q. Was this man badly injured when you got him up out of the hold?

Mr. WARREN.—I object; it is not proper cross-examination.

The COURT.—Counsel for the libelee didn't go into the nature of the injuries at all.

Mr. WARREN.—I insist on my objection unless

(Testimony of C. M. Aika.)

counsel wants to [124] make him his own witness.

Mr. DAVIS.—I appeal to the Court that it is proper cross-examination.

The COURT.—He has not undertaken to prove anything about the nature of the injuries at all by this witness, and therefore I will disallow the question.

Mr. DAVIS.—Except to your Honor's ruling.

The COURT.—All right.

Mr. DAVIS.—How long have you been on the steamship "Kinau"? A. More than a year.

Q. And did you help put any of the freight that came out on the boat down in the hold from the stage?

Mr. WARREN.—Objected to as immaterial; there is no testimony of freight having been put down in the hold.

Mr. DAVIS.—The boxes that come out in the boat. I submit the question without argument; I submit it is proper cross-examination.

Mr. WARREN.—I will withdraw the objection to save time.

The COURT.—Go ahead.

A. You mean at that time?

Mr. DAVIS.—Yes.

Q. No, no freight put in.

Q. Where were you when the man was brought up out of the hold? A. I was down in the hold.

Q. You went down in the hold?

A. I was in the hold.

Q. I see; when the man was down there, when the

(Testimony of C. M. Aika.)

Filipino was down there?

A. After he fell down in the hold I went down there. Thought [125] I already explained to you.

Q. What was his condition at the time you got down there?

Mr. WARREN.—The same objection, that is not in on direct examination at all.

The COURT.—He didn't bring out anything of that kind, Mr. Davis.

Mr. DAVIS.—I will ask him, then, what he saw when he got in the hold, what he found.

Mr. WARREN.—The same objection, it is immaterial to the direct examination.

Mr. DAVIS.—I submit it is material, what he saw and what he found.

The COURT.—Sustain the objection.

Mr. DAVIS.—Kindly allow me an exception. That is all.

Redirect Examination of C. M. AIKA.

Mr. WARREN.—Where is this stage located with respect to the port door through which the freight was to pass?

Mr. DAVIS.—I object; it is already asked and answered.

The COURT.—He answered that as forward of the hold and that he was about seven feet from it.

Mr. WARREN.—That was not gone into on direct, your Honor; it was brought out on cross and it was wrong. The witness certainly didn't under-

(Testimony of C. M. Aika.)

stand the question, and I want the record to show—well, your Honor considers it immaterial, I will drop it. [126]

**Testimony of Pua Ku, for Libelee.**

Direct examination of PUA KU, for libelee, sworn.

Mr. WARREN.—(Through Interpreter, Mr. HAKUOLE.) Q. You were a member of the Inter-Island steamer "Kinau" last December, when a Filipino fell into a hatch? A. Yes.

Q. Where were you at the time of the accident?

A. I was in the boat.

Q. Where was the boat? A. Left side.

Q. Port or starboard? A. Port side.

Q. And what were you doing?

Mr. DAVIS.—I submit it is incompetent, irrelevant and immaterial what he was doing in the boat; the accident didn't happen in the boat.

The COURT.—Objection overruled.

A. Getting ready to get the freight aboard.

Mr. WARREN.—Where was that freight to go, through what place to get it on to the ship?

A. It was to be lifted on the stage and from there into the steamer and down in the hatch, hold.

Q. And where was that stage with respect to the boat?

A. The stage is above—the boat is below, and the stage is immediately above it.

Q. Now, where was the stage with respect to the

(Testimony of Pua Ku.)

port door of the ship where the freight was to go through? [127]

A. This stage was directly outside below—no, this stage was directly below the port hole where the freight was to be put in.

Q. Yes; now right after the accident do you know what was done with the man?

A. Well, all what I know is when the injured man was brought into the boat and rowed ashore.

Q. Did you go in the boat ashore with him?

A. Yes, I was in the boat.

Q. Now, at the time that accident happened and that man was put down in that boat to be taken ashore what was the condition—withdraw that. Was it light or dark? A. It was light.

Q. Now you are speaking of outside of the boat, outside of the steamer?

A. Well, light outside of the steamer and light outside of the steamer.

Q. Well, how do you know about the light inside of the steamer? A. It was day time, daylight.

Q. Now, can you give us—

Mr. DAVIS.—That is a voluntary answer about being light inside the steamer, and I move it be stricken out.

The COURT.—Overrule the motion to strike.

Mr. DAVIS.—Exception.

Mr. WARREN.—What time of day was it as near as you know?

A. I don't know about that because I didn't have a watch at the time to look.



(Testimony of Pua Ku.)

Q. Well, have you any idea at all? [128]

A. I think it was after five o'clock, between five and half-past five.

Q. Now, when you got to the landing with the man in the boat, how about the conditions then,—was it light or dark there? A. It was light.

Mr. WARREN.—Cross-examination.

Cross-examination of PUA KU.

Mr. DAVIS.—(Through Interpreter, Mr. Hakuole.) Q. You didn't see this accident?

A. I didn't see this Filipino fall in the hold.

Q. No, you were not in the steerage quarters at all? A. I was in the boat at the time.

Q. Yes, and was it nearer six o'clock than five o'clock when the accident happened?

A. It was between five and six o'clock.

Q. You don't know what time it was; that's about it. A. No, I don't know.

Q. You don't know what time it was?

A. I don't know the time.

Q. You haven't even got any idea about it.

A. No, there was no time for me to think about the time; I was in a hurry to take the Filipino ashore.

Q. Exactly; and all you know about it was after this Filipino was injured you took him ashore in the boat? A. Yes. [129]

Mr. DAVIS.—Yes, and that's all.

Mr. WARREN.—That is all.

The COURT.—This case will be continued until Friday at 2:00 o'clock.

This case was then continued until May 3, 1918,  
at 2:00 o'clock P. M. [130]

*In the United States District Court, in and for the  
Territory of Hawaii.*

AD-172.

ANATALIO PENEYRA, an Insane Person, by  
ADRIANO BORHA, His Guardian Ad-  
Litem,

Libellant,

vs.

The American Steamship "KINAU," Her Engines,  
Machinery, Boilers, Tackle, Boats, Furniture  
and Appurtenances,

Libellee.

Honolulu, H. T., May 3, 1918.

10:00 A. M.

**Testimony of Dr. R. G. Ayers, for Libellant.**

Direct examination of Dr. R. G. AYERS, for  
libellant, sworn.

Mr. WARREN.—Mr. Davis, is this part of your  
case in chief?

Mr. DAVIS.—Yes.

Q. Your name, please, Doctor?

A. R. G. Ayers.

Q. Are you a physician and surgeon duly licensed  
to practice [131] medicine and surgery in the  
Territory of Hawaii? A. I am.

Q. Now, did you go to the Insane Asylum yester-  
day and examine a Filipino? A. I did.

Q. By the name of Anatalio Peneyra?

(Testimony of Dr. R. G. Ayers.)

A. Yes, sir.

Q. Did you examine him, Doctor Ayers?

A. I did.

Q. Will you kindly state to Judge Vaughan the condition you found the man in?

A. I made an examination of the man's head, and I found a scar on the right-hand side over what is called the parietal region, a scar that was not of extremely recent origin, but not an old scar. I examined the man from his historical standpoint and the history of the case and his mental condition at that time. I must say that the examination at the time I examined him was negative, in other words that his mental condition was pretty nearly normal.

The COURT.—Normal?

A. At the time I examined him yesterday, yes, sir.

Q. Yesterday?

A. Yesterday. The history of the case, which I think is of the most importance, if I am allowed to give that—

Mr. WARREN.—That necessarily comes within the range of hearsay, your Honor.

A. No, I examined the records of the hospital, and also the *mittimus* through which he was committed.  
[132]

Mr. WARREN.—That is hearsay, the opinion should rest upon matters only in evidence. The directors' opinion should not rest on hearsay evidence—hearsay matters.

The COURT.—He can't base any opinion on

(Testimony of Dr. R. G. Ayers.)

hearsay. The only thing he can base an opinion on is the evidence here.

Mr. DAVIS.—Was the man sane or insane yesterday when you saw him?

A. At the time I saw him he was very nearly sane.

Q. But not completely recovered.

A. Well, as far as—in the examination, his mental condition was pretty nearly normal. The only thing I did notice was in questioning him regarding his sickness after the accident. He was pretty hazy regarding what had happened, that is all I can state.

Q. Yes, and how was his physical condition?

A. His physical condition was pretty fairly good.

Q. And he still is an inmate of the insane asylum?

A. An inmate of the asylum; yes, sir.

Q. Is there any other fact that you have not stated, Doctor?

A. Other than the history of the case that is all I can state in the matter.

The COURT.—That would be hearsay, Doctor.

A. Without a history, a diagnosis is usually impossible in any case.

Mr. DAVIS.—But you did get the history and made a diagnosis?

A. I got the history from the records of the hospital,—the asylum.

Q. From your examination of that scar and so forth, did you— [133] would that injury be sufficient to cause some disturbance of the brain so as to bring on insanity?

Mr. WARREN.—I object to that on the grounds

(Testimony of Dr. R. G. Ayers.)

that it does not appear that there is sufficient showing, that the doctor has knowledge of what the circumstances were, or how he came to be injured.

The COURT.—That objection is good.

Mr. DAVIS.—Now, then, Doctor,—all right. If it were as follows,—I will put a hypothetical question, your Honor. On or about the 19th day of December, 1917, if this man had fallen into a—down a hatchway into the hold of the steamship "Kinau," a distance of ten or fifteen feet, and struck on his head where that scar was, and brought up insensible, would such a fall and from your examination of the scar as I have described, be likely to cause mental trouble?

A. Well, it would be possible, it would be likely to; it would be possible.

Q. It could have that effect?

A. It could have that effect.

Mr. DAVIS.—That is all I will ask him.

Cross-examination of Dr. R. G. AYERS.

Mr. WARREN.—When you examined this man yesterday, Doctor, you conversed with him? [134]

A. Through an interpreter.

Q. Yes, that is the only means you had of getting any communication between yourself and him?

A. Well, only it being in Filipino, they used a good deal of the Spanish language and I understood quite a good deal of what was said, but I would not say that I could have conversed with him without an interpreter. I could not have conversed with him without an interpreter although I am a student of

(Testimony of Dr. R. G. Ayers.)

the Spanish language.

Q. That interpreter was Mr. Borha?

A. No, sir.

Q. He was not?

A. He was not. The interpreter was the city and county official court interpreter, Mr. Ocampo.

Q. Now, I want to ask you—well, I think that covers it. No further questions.

The COURT.—Stand aside, Doctor. [135]

**Testimony of Dr. W. A. Schwallie, for Libellant.**

Direct examination of Dr. W. A. SCHWALLIE, for libellant, sworn.

Mr. DAVIS.—Are you a doctor of medicine and surgery holding a diploma and duly licensed to practice medicine and surgery in the Territory of Hawaii? A. I am.

Q. How long have you been?

A. I graduated in 1889 from the University of Cincinnati.

Q. Do you occupy any position in reference to the insane asylum at the present time,—if so, what is it?

A. I am the superintendent, and have been for the last five years, little more than five years, of the Oahu Insane Asylum.

The COURT.—Located in Honolulu?

A. Yes, sir.

Mr. DAVIS.—The asylum is here in Honolulu

A. Yes, sir.

Q. Now, did you receive into that insane asylum under commitment, a person by the name of Anatalio

(Testimony of Dr. W. A. Schwallie.)

Peneyra, and if so, when?

A. We did, on January 5th, 1918.

Q. Did you make an examination of this man when he was taken to the insane asylum?

A. Not the first day, but a day or so afterwards we usually do.

Q. A day or so afterwards did you make an examination of this man? [136]

A. Yes, sir, I did.

Q. Will you please state to his Honor, Judge Vaughan, what you found?

A. He was in a melancholy state; depressed. He took very little interest in the surroundings. He would go to his meals, and he ate well and slept well. We did not—could not converse with him so he did not illustrate any hallucinations or delusions or anything that way.

Q. Was he received in the insane asylum by commitment from the district magistrate?

A. He was.

Q. As an insane person?

A. As an insane person.

Q. And so entered on your books? A. Yes, sir.

Q. Did you make an examination of the wound upon his head, Doctor? A. I did.

Q. What did you find, Doctor?

A. I found a scar about an inch and a half long over the right parietal region. There was no depression, that is, external depression of the bone.

Q. From your examination of these injuries, Doc-

(Testimony of Dr. W. A. Schwallie.)

tor, would that be likely to cause mental trouble in a way, or insanity?

A. It is possible it could.

Q. Yes; well, was the man sane or insane when you received him in the asylum?

A. Well, I would regard him as insane.

Q. Yes, he was insane, and he has been there ever since under treatment? A. He has. [137]

Q. He has not been discharged? A. Not yet.

Q. He is there yet? A. Yes.

Q. Is he improving?

A. He is; I consider him sane at present,—well, that is an opinion.

The COURT.—That is all right; you are entitled to give that.

A. Ten days ago I directed my assistant to write up the history and have him examined. He requested to be released, and also his guardian asked to have him discharged.

Mr. DAVIS.—But he has not been discharged?

A. Not yet.

Q. And did you question him as to the accident that occurred on the 17th of December on board the steamship “Kinau”? A. I did.

Q. Did he remember any of the facts and circumstances connected with that?

A. He did; yes, sir, he did.

Q. He did? A. Yes.

Q. You examined him as to that when?

A. Saturday morning with Doctor Ayers.

Q. Oh, yes, lately I see, but he is still in the custody



(Testimony of Dr. W. A. Schwallie.)

of the insane asylum? A. He is still there.

Q. And is that wound healed altogether?

A. It has, very nicely.

Q. Now, he has been there how long, Doctor?

A. Since January the 5th, that is four months.

Q. Eh? A. Four months. [138]

Q. Since January the 5th?

A. January 5th, yes.

Q. Been there four months; how long was he confined on "Kauai," do you know?

A. Well, the accident occurred on the 18th of December, so the commitment paper states.

Q. You say it is possible from the injury received and the examination you made of that man's head that it would cause brain trouble and insanity. Isn't it most probable that it would, a fall of that kind?

A. It may cause it; it is possible it could cause it.

Q. It could cause it? A. Yes.

Mr. DAVIS.—Take the witness.

Cross-examination of Dr. W. A. SCHWALLIE.

Mr. WARREN.—It is also possible, Doctor, that the state of melancholia depression in which you found this man when he entered the institution could have been caused by various other troubles?

A. It is possible he may have been melancholy at the time he had the accident, that is possible.

Q. Yes, was there anything in your examination of the man at that time that would lead you to form an opinion then, did you form an opinion that his depression of melancholia was due to some specific cause, or did you not know at all?

(Testimony of Dr. W. A. Schwallie.)

A. I could not form any opinion, only an opinion from the [139] history of the case that is in the commitment.

Q. From your own examination?

A. No, I could not state positively that that was the cause of his insanity, this blow.

Q. Will you state, please, say two or three other causes, contributing causes to insanity known as melancholia?

A. Well, it might be from disease, it may be a specific cause, for instance, syphilis, alcoholism and numerous causes.

Q. Then from your examination nothing would induce you to single out the blow as being more likely to be the cause than anything else?

A. Well, he might have been melancholia before that. The commitment paper states it is acute mania.

Q. You found no evidence of any depression of the skull? A. No depression at all.

Q. And in saying that he is nearly sane, practically sane—pretty nearly normal, can you tell us a little better what you mean by normal, what standard you take when you say normal?

A. Well, he has no hallucinations, delusions or illusions, his ideas as to time and place are good, his memory is good, he remembers,—for instance, they brought a bundle of clothing and he inquired about his clothing, and when he was going to be discharged.

Q. If you were to have that man submitted to you without any previous connection with the case, ex-

(Testimony of Dr. W. A. Schwallie.)

amining him as though in the first instance yesterday—his condition yesterday, [140] and had no previous knowledge about him, would you have found any reason in your mind to suspect he was not normal?

Mr. DAVIS.—I object to the question on the grounds that it is improper cross-examination, not based on the real facts, he is asking for an opinion as to what he might think, provided he didn't know the man had received a previous injury and had no knowledge of what took place and so forth.

Mr. WARREN.—Withdraw the question.

Q. From your examination of that man yesterday, Doctor, basing your statement now upon the examination you made yesterday, did you find anything concerning him that indicated that he was not normal? A. I found nothing that indicated that.

Q. Does the fact that his memory may have been, or was, somewhat hazy *has* to some parts of the accident, some facts or circumstances connected with the accident, in any way detract from your statement already made that you consider him normal, that is, did the fact that in the past he was hazy as to some circumstances in the past detract from your opinion as he now is, he was apparently normal?

A. I didn't understand.

Q. I will put it another way: Isn't it common that a person who has undergone an unbalanced condition of mind frequently unable to recollect some particular facts and circumstances connected with an accident or with the incipency of a mental disturbance?

(Testimony of Dr. W. A. Schwallie.)

A. Yes, that frequently occurs. That wouldn't detract from my opinion as to his sanity at the present time. [141]

Q. How did you make your examination of this man yesterday, through an interpreter?

A. Through an interpreter.

Q. And who was the interpreter?

A. Mr. Ocampo was the first interpreter.

Q. That was yesterday morning?

A. Yesterday morning.

Q. And yesterday afternoon?

A. And the guardian,—I forget his name; Adriano, I think.

Q. Now, you said that this man asked to be examined so as to be released from the asylum?

A. He did.

Q. How did he make that request?

A. Well, we have got to speak in pantomimes to a great extent.

Q. You say his guardian made the same request?

A. He did.

Q. What did he say to you at that time concerning that?

A. Well, he wanted to know when the commission would be up to examine him.

Q. Yes, and what did he say about the man's condition, if any, in his judgment?

A. That he thought the man was all right—

Mr. BANKS.—We object to the question as to what the guardian thinks or any opinions he may have expressed, it is not shown that the guardian is

(Testimony of Dr. W. A. Schwallie.)  
an expert at all.

The COURT.—Overrule the objection.

Mr. BANKS.—Exception.

Mr. WARREN.—What did he say about it, Doctor? You answered that he said it was all right.  
[142]

A. Yes, sir.

Q. What did you tell him about the time the commissioners would meet?

A. I told him that lay with the commission, the chairman usually states the time and date and that I would notify him at the time of the—when the examination was to be held.

Q. People are discharged from the asylum only upon the order of the Commissioners on Insanity?

A. Yes, sir; that is right.

Q. And has a hearing of the commissioners as to his sanity been held in that case?

A. There was a meeting held yesterday on three cases. Two previous cases were considered but one of the commissioners was not present, that is, Doctor Cooper, I will name them, and the other commissioner, Mr. Warren, did not consider himself eligible. Doctor Herbert passed on the case.

Q. Doctor Herbert examined the man and he still is to be examined by Doctor Cooper?

A. Yes, I expected him this morning, or last night. He did not arrive, I suppose he is busy with the draft.

Mr. WARREN.—That is all.

Redirect Examination of Dr. W. A. SCHWALLIE.

Mr. DAVIS.—Mr. Warren, counsel in this case,

(Testimony of Dr. W. A. Schwallie.)

is one of the commissioners who decides whether the man should be [143] released or not?

A. No, he did not consider himself eligible.

Q. But I say he is one of the commissioners?

A. He is one of the commissioners.

Q. And he refused to act, counsel in this case refused to act because of his connection with this case?

A. He did.

Q. Well, the man is still in the insane asylum, he hasn't been discharged? A. Yes.

Mr. DAVIS.—I just wanted to make that plain, Doctor, thank you. Mr. Warren, if you will admit that the other doctor will testify the same as Doctor Schwallie there will be no need to bring him here.

Mr. WARREN.—If it is practically a repetition of this witness' testimony I will admit that.

Mr. DAVIS—What is his name, Doctor?

A. Benjamin A. Michaels.

Mr. DAVIS.—It is admitted that Doctor Benjamin A. Michaels will, when sworn, testify to the same effect as Doctor Schwallie with reference to the incarceration, examination and condition of this insane person, Anatalio Peneyra.

Mr. WARREN.—All right.

The COURT.—I would like to ask a question.

Q. You say you have been treating this man Peneyra, the libelant, whatever his name is, since when? A. January 5th.

Q. If I understand your testimony, the effect of what you say [144] is his insane condition may have been caused by the fall and may not, you have

(Testimony of Dr. W. A. Schwallie.)

no opinion of that as to how his insane condition was produced?

A. It could produce that mental state.

Q. The fall could have produced that mental state?

A. Yes, sir.

Q. But you have not said what in your opinion did produce that mental state? A. No.

Q. And how have you been treating this man since he came to the asylum, what kind of treatment have you been giving him?

A. Nothing special,—good food, diet.

Q. Well, that treatment would be the same without regard to what was the cause of his condition at the time he came, without regard to whether it was caused by a fall or something else, the treatment would be the same?

A. I didn't just catch that last?

Q. You say he has been treated by you ever since he has been in the asylum? A. Yes, sir.

Q. And that your treatment has been nothing particular?

A. No, probably the wound was not healed. My assistant takes care of that.

Q. But giving him good food? A. Very true.

Q. Yes?

A. And taking good care of him. The wound healed naturally, probably they applied some anti-septics or something like that. [145]

Q. What I asked you was, was that treatment, was that the treatment that was proper for his condition without regard to whether it was caused by a blow,

(Testimony of Dr. W. A. Schwallie.)

by a fall or something else?

A. We did not see any other treatment to make, no other treatment, only let nature, if there was no extravasation of blood in the brain.

Q. You found no pressure?

A. None at all; no, sir.

Q. Found none.

A. No depression in the skull. There was a scalp wound.

Q. The wound is entirely on the scalp?

A. Practically.

Q. No depression at all?      A. No depression.

Q. Any clot on the brain or anything? Could you tell about that?

A. No, we *can* tell. There is paralysis usually when we have a clot; there is paralysis of some kind, but none in this case, either arm or leg.

Q. The only thing to do was to take good care of him?

A. Yes, and good food. My assistant advised me that he treated the wound locally.

Q. He ate and slept regularly?

A. Ate and slept regularly every day. That was a little wound treated locally with antiseptics and it healed naturally.

Mr. DAVIS.—If he had constitutional troubles would he have recovered by simply the treatment you gave him?

A. Well, now, that is—we have patients recovering— [146]

Q. No, I am asking you would he have recovered



(Testimony of Dr. W. A. Schwallie.)

if he had constitutional troubles?

A. I could not say that.

Q. Wouldn't you administer other treatment if he had constitutional troubles? A. Well, yes.

Q. And in answer to Judge Vaughan you are not prepared to deny there is no clot on the brain? The only thing you say is there was no paralysis. Are you prepared to say absolutely there is no clot on the brain?

A. Well, we haven't made an X-ray examination of it.

Q. No, and you are not prepared to say there is not?

A. No; when there is a clot on the brain there is usually paralysis.

Q. But you are not prepared to say there is not any clot on the brain?

A. Well, there is usually paralysis when there is a clot on the brain.

Q. Well, are you prepared to state, Doctor, that there is no such a thing, absolutely?

A. From my medical experience I would say that there is no clot on the brain.

Q. You think there is not but you are not sure, are you sure, Doctor, about that? A. Yes, sir.

Q. Absolutely?

A. I am as sure—as I say, we have not looked into the brain.

Q. Did he exhibit any syphilitic symptoms at—of any kind? [147]

A. He has not been tested for syphilis.

(Testimony of Dr. W. A. Schwallie.)

Q. No symptoms of that kind apparent, is there?

A. No, no, symptoms of syphiletic syphilis.

Q. Would he have recovered if he had syphilis, would he have recovered by the treatment you gave him? A. No, I don't think so.

Q. You would have given other treatment if he had syphilis, wouldn't you? A. I would.

Q. Do you know of any other causes you can state for insanity except a fall and wound on the head, and that accident?

A. I don't know of any other cause. I would have to get that from the previous history of the case.

Mr. DAVIS.—That's all.

Mr. WARREN.—That is all, your Honor. [148]

**Testimony of Adriano Borha, for Libellant  
(Recalled).**

Direct examination of ADRIANO BORHA, for libellant, recalled.

Mr. DAVIS.—This is the little girl belonging to this man. Anatalio Peneyra? A. Yes, sir.

Q. That you told about here when you were in court before? A. Yes, sir.

Q. How old is she?

A. She is about between six and seven.

Q. You were up to the insane asylum yesterday afternoon; did you make any request to have this man released from there?

A. No, I just translated his request that he begged the officers of the asylum whether they can let him off, and I just translated his words.

(Testimony of Adriano Borho.)

Q. But you did not make any request to have him discharged yourself? A. No, sir.

Q. It just come from him, eh?

A. Yes, sir, I did.

Q. Yes; where is his sisters now—on Kauai?

A. Sisters. Yes, in Kauai.

Mr. WARREN.—He is trying to impeach his own witness. I move it be stricken, I object to it.

Mr. DAVIS.—Well, that is all.

I have two witnesses from Kauai to show that this man was in sound physical and mental condition, and with that [149] evidence I will close my case as soon as I get the evidence here.

Mr. WARREN.—I take exception to that; I want the libellant to finish before I put on my case. I submit if he has anything more he can bring it in rebuttal, if it is proper.

The COURT.—Yes, I am not going to require Mr. Warren to put on testimony until you are finished, Mr. Davis.

Mr. DAVIS.—I want a continuance in this case then.

Mr. WARREN.—I have got three witnesses out here who are very busy from the ship, and I don't propose to have them come back again if I can help it.

The COURT.—Do you close your case, Mr. Davis?

Mr. DAVIS.—No, I am asking for time to bring my witnesses here from Kauai.

Mr. WARREN.—These witnesses of mine are from the ship and were notified to be here to-day.

**Testimony of James Gregory, for Libelee.**

Direct examination of JAMES GREGORY, for libellee, sworn.

Mr. WARREN.—You are the master of the Inter-Island steamship “Kinau,”—you were on the 19th of December last?     A. Yes, sir.

Q. And you recall the occasion of an accident to a Filipino on the “Kinau” at Nawiliwili harbor at that time?     A. Yes, sir.

Q. Where were you when you first knew the man had been injured?

A. Beg pardon—what did you say?

Q. Where were you when you first heard that the man was injured, where were you?

A. I was on the wharf at Nawiliwili, at the upper end of the wharf.

Q. Meaning what?     A. The shore end.

Q. When you saw him, what was he doing there, if anything?

A. He came along the wharf and the freight clerk told me he met with an accident aboard the ship.

Q. What did you do?

A. I immediately went to the purser and told him to get an automobile and take him to the hospital.

Q. Did you speak to the man himself?

A. No, sir, I did not.

Q. Now, at the time—that was done, was it, he was sent to the hospital right away?

A. Yes, sir, right away. [151]

Q. At that time can you tell me what was the con-

(Testimony of James Gregory.)

dition—withdraw it. State whether or not at that time it was light or dark. A. It was light.

Q. At the wharf when the man arrived and you saw him there? A. It was light.

Q. Now, can you give a little better idea what you mean by light by comparison, for example, by the light outside now.

A. I saw the man coming down the wharf. It was not as light as it is now, but they had no need of lights or anything like that. We went to the little wharf office there and I spoke to the purser, he was working there but he had no lights.

Q. Has that wharf office any windows?

A. Yes, sir.

Q. Which way do they face?

A. I think one window faces north, and then there is a little window where the passengers come in and get tickets, and he was working there at his desk.

Q. And you went inside the room?

A. I just went to the room; the door was open and I told him a man met with an accident and to get an automobile right away and send him to the hospital.

Q. How near the window was the desk where he was working?

A. The desk is like this here, and the door there, and the desk is there. You come in the door here, and here is the desk here, and here is a little window here where people get their tickets, and here is a little window here. [152]

Q. How large a window?

(Testimony of James Gregory.)

A. Oh, quite a large sized window, about half the size of this.

Q. Half the size?

A. Well, not half the size.

Q. Compared with the door behind you.

A. Something like that.

Q. About the size of one of those two doors?

A. Yes, sir.

Mr. WARREN.—Cross-examine.

Cross-examination of JAMES GREGORY.

Mr. DAVIS.—Captain Gregory, you don't know what time it was?

A. Well, I should judge about—

Q. No, not your judgment; I want to know if you really know what time it was.

A. I could not positively give the real time; it was about half-past five o'clock—twenty minutes past five.

Q. Half-past five?

A. Somewhere between that time.

Q. Well, you didn't look at your watch at the time, did you, Captain? A. I did not.

Q. Sure it was after five o'clock, though?

A. Yes, sir.

Mr. DAVIS.—That will be all for Captain Gregory; thank you. [153]

**Testimony of David Kamaiopili, for Libelee.**

Direct examination of DAVID KAMAIOPILI, for libellee, sworn.

Mr. WARREN.—Mr. Kamaiopili, on the 19th of

(Testimony of David Kamaiopili.)

December you were purser on the Inter-Island steamship "Kinau"? A. Yes, sir.

Q. And at that time she was at Nawiliwili, on Kauai?

A. I believe on the 18th, wasn't it, Mr. Warren?

Q. 18th or 19th. A. 18th.

Q. At any rate, it was the occasion when a Filipino had fallen into a hatch on the ship and brought ashore and taken to the hospital? A. Yes, sir.

Q. Where were you when you first had information that an accident had occurred?

A. I was in the company's ticket office checking up my tickets and coin.

Q. What were you doing there?

A. Checking up my tickets and coin.

Q. And what was the state of the day as to light or darkness, was it light or dark where you were working in the ticket office?

A. Well, in checking up my tickets and money I didn't use any lights in the office.

Q. Well, did you have plenty of light for your purpose? A. Yes, sir; I had sufficient light.

Q. What sort of work exactly were you doing?  
[154] By that, were you merely checking off the items or doing any writing?

A. Checking up my passengers and counting up my coin, the money I collected.

Q. Doing any writing or reading?

A. Well, I didn't have to do any writing.

Q. Reading names?

(Testimony of David Kamaiopili.)

A. Yes, sir; I had to see who I had down on the passenger list.

Q. Which way did the windows in that room face, what direction of the compass?

A. About north and northeast.

Q. On that west side are there any windows?

A. On the west; no.

Q. Can you give us your best judgment as to what time it was when you were told that an accident occurred, and you were to take the man to the hospital, or send him there?

A. About, between five and five-thirty, I believe it was.

Q. Yes, you didn't look at your watch?

A. No, I didn't.

Q. What did you do when you were requested to send him to the hospital?

Q. Well, the captain came in to me and said, "Purser, you better get a machine; there's a man hurt," and I immediately went to the garage,—it was only a hundred feet away,—and ordered a car. The man was just walking up from the wharf, and I told the freight clerk to get on the machine with this man and take him right up to the hospital.

Q. Now, when did you go back to the ship, did you await the [155] return of the freight clerk before you went? A. Oh, yes.

Q. And about how long a time had passed from the time you started off that man to the hospital before he, before you started him off to the hospital with the man and you went to the ship again?



(Testimony of David Kamaiopili.)

A. The freight clerk?

Q. Yes, when did he get back to the ship?

A. Well, it was fully a half an hour, or a little more.

Q. Now, at that time that you went back to the ship, how was it as to light or darkness?

A. Well, it was still light so that I didn't have to use any electric light.

Cross-examination of DAVID KAMAIOPIILI.

Mr. DAVIS.—Have you ever been aboard the "Kinau"?

A. Have I been aboard the "Kinau"?

Q. Yes. A. I am working on there.

Q. Yes, and you know between-decks there in the steerage where this hatch was where the man fell down, is that as light a place as where you were working in your office?

A. Well, I guess you would have just as much light as where I was working in the office.

Q. Swear to it?

A. Yes, sir, I'll swear to it, because the two ports were open. [156]

Q. Yes.

A. So that they get sufficient light down to the 'tween-decks at the bottom of the hatch.

Q. Yes, and the office where you were working has a door and two or three windows, how many windows?

A. Well, two windows and a door, well—

Q. No, that office I am talking about.

A. The office has a door and two windows and my

(Testimony of David Kamaiopili.)

office window. Three windows and a door and my office window.

Q. And how high a ceiling,—covered over with boards, ain't it?

A. Yes, about as high as from here to that green border.

Q. What green border do you mean?

A. Above the white.

Q. I see, way up there. How many feet is that?

A. I should judge that is about eighteen feet.

Q. Yes, and what's the distance between the decks of that vessel there? A. Couldn't tell you.

Q. Isn't it only about five or six feet?

A. I think more than that.

Q. Well, how much more?

A. Couldn't tell you.

Q. Will you swear it is ten feet?

A. I couldn't swear to that.

Q. It isn't as high as the office ceiling is it, by any means? A. I couldn't swear to that.

Q. Couldn't swear? You don't know. Will you swear it is as high as the office ceiling between-decks there?

A. Between the bottom hatch and the top of the hatch, you see, [157] there is two decks—

Q. Where the man was standing there on the upper deck I am talking about, he was down between-decks, wasn't he? A. Yes.

Q. Exactly; and I am asking you the distance between the lower deck and the covering over it, that's

(Testimony of David Kamaiopili.)

of course the upper deck,—do you know anything about the distance?

A. I think the 'tween-decks is just about three or four feet over my head.

Q. That would be about seven feet, about eight feet, eh? If it is three feet higher than you, it would be about eight feet, wouldn't it?

A. About eight or ten feet.

Q. And your office is about eighteen feet high?

A. Well, I am talking of the 'tween-decks. Of course the lower deck is another.

Q. I am talking between-decks.

Mr. WARREN.—Let him explain that.

A. I am trying first to give you the height between the upper deck and the 'tween-deck. Now, from the 'tween-deck to the lower deck is about the same distance.

Mr. DAVIS.—Yes, that would be about eight feet, wouldn't it?

A. To tell you the truth, I don't know where the man hit, whether he stopped at the 'tween-deck or the lower deck; there's two decks, you know.

Q. I know, but isn't it, where that hatch is isn't that the lower 'tween-decks, isn't there a top deck goes over that place where he went in that port?

A. Yes, sir. [158]

Q. Well, that's where he was standing, wasn't it?

A. Yes, sir.

Q. Well, I am asking you how high it was from the place where he was standing to that place that covers it over there.

(Testimony of David Kamaiopili.)

A. I see. Oh, that deck isn't as high as this office.

Q. No, of course not, by how many feet,—it ain't seven feet, is it? A. Oh, yes, all of that.

Q. Is it eight,—is it eight feet?

A. I should judge between ten and twelve feet.

Q. Well, you never measured it? A. No.

Q. But it isn't as high as the office ceiling,—sure of that? A. No.

Q. And only these two ports at the time open?

A. I couldn't swear they were open at the time.

Q. No, there may have been only one open, eh,—you don't know how many were open?

A. Couldn't tell you.

Q. And you don't know whether it was light or dark on board of that steamer or not.

A. At that time no; I couldn't tell you.

Q. No, you couldn't tell. There is one thing about it, in your office there you didn't do any reading at all—writing I mean, just checking, wasn't you?

A. Well, I had to read to see what passengers I had on the passenger list. I had to put my figures down while counting my coin.

Q. You were close to the window?

A. Oh, yes. [159]

Q. Sure, right up against the window; was the window open?

A. My desk was right at the window.

Q. Sure, and was the window open?

A. The one selling tickets was, but that on my right wasn't.

(Testimony of David Kamaiopili.)

Q. And you were right up close against the window? A. Yes.

Mr. DAVIS.—That's all. [160]

**Testimony of O. H. Otterson, for Libelee.**

Direct examination of O. H. OTTERSON, for libelee, sworn.

Mr. WARREN.—Mr. Otterson, you are the chief officer of the Inter-Island steamship "Kinau"?

A. Yes, sir.

Q. And you were on December 19th, last year?

A. I joined the ship on the 17th of December.

Q. Were you on board the vessel at Nawiliwili?

A. Yes, sir.

Q. And that was the occasion when a Filipino passenger fell into the hatch into the 'tween-decks?

A. Yes.

Q. Where were you when you first learned of that accident?

A. I was standing at the top of the gangway, receiving the passengers coming aboard ship.

Q. After the accident you saw the injured man?

A. I did,—saw who?

Q. This man that was hurt.

A. We picked him out of the hold and put him in the boat.

Q. Did you see him before that when he came aboard ship?

A. I am not positive about seeing him before he came aboard ship.

Q. Did you see his little girl?

(Testimony of O. H. Otterson.)

A. Yes, that girl I saw.

Q. This is the little one here, where was she when you saw her?

A. Sitting on a bench on the upper deck on the port side. [161]

Q. Alone, or anyone with her?

A. At the time I seen her she was sitting alone with two bundles of matting alongside of her.

Q. When you learned of the accident—withdraw that. Do you know whether or not this little girl came up the gangway past you to the upper deck?

A. It's one of the rules on board the Inter-Island boats that parents come up first and pass the children up.

Q. Your duty then was at the head of the gangway? A. Yes, sir.

Q. When you were told of the accident, what did you do?

A. Well, I went down below to the hallway of the companion-way and with the third mate went in the hold and the two of us picked the man up and put him in the boat lying alongside discharging freight and then took the girl and put her in the boat that was alongside the gangway.

Q. When you went in to the 'tween-decks hold—withdraw that. Had you on that day near to the time of the happening of the accident been in the 'tween-decks hold before?

A. About fifteen minutes before the passengers begin coming off to the ship, I always make a round of the ship, and I was in the 'tween-decks then.

(Testimony of O. H. Otterson.)

Q. How long did you stay in there that time?

A. Oh, about four or five minutes.

Q. And that was fifteen minutes before the accident?

A. About fifteen minutes before the accident.

Q. And after you left there, where did you go?

A. Right up to the upper deck and sent the third mate forward [162] to receive some automobiles.

Q. What was the occasion that you were stationed at the head of the gangway to receive passengers as they came on, how did you come to leave and go to the 'tween-decks and then come back?

A. To see that everything was all right down there, the hatch on and the chain around it.

Q. You went down there this time for that purpose? A. Yes, sir.

Q. What did you find as to the condition of the hatch?

A. The hatch was on and the chain around.

Q. Did you at any time say anything to the bos'n reprimanding him on account of the chains around that hatch?

A. Yes, shortly before that when we arrived in Nawiliwili.

Q. Just tell us about that, will you?

A. He had no chains around the hatch and—

Mr. DAVIS.—I submit what he did before the accident happened and what he said is not evidence in this case, it looks like manufactured testimony. It's incompetent, irrelevant and immaterial, and not

(Testimony of O. H. Otterson.)  
 tending to prove or disprove any of the issues in this case.

The COURT.—Overrule the objection.

Mr. DAVIS.—Exception.

Mr. WARREN.—Read the question, please.

(Last question read.)

A. Shortly after our arrival in Nawiliwili I went down there and there were no chains around the hatch.

The COURT.—Shortly after your arrival in Nawiliwili there [163] were no chains around the hatch?

A. I went down there and there were no chains around the hatch, and I gave the bos'n a calling down and told him to put the chains on—told him to put the hatches on and the chains around the hatch.

The COURT.—To put the hatches on the chains?

A. To put the hatches on and the chains around.

Mr. WARREN.—Did you give him any reason at that time why the chains should be around?

A. To keep the passengers from making their beds on top of the hatch, because after they once make their beds you can't get them off again when you want to put freight in the hold.

Q. How long was that before the accident?

A. Shortly after we got to Nawiliwili.

Q. Yes.

A. And I made a round afterwards and everything was all right.

Q. About how long before the accident was that?

A. About forty minutes or so.



(Testimony of O. H. Otterson.)

Q. Now, between that time that you were in the 'tween-decks hold and the time of the accident, did you go in again?

A. I went down about fifteen minutes before the first boat came off, when it left the wharf with the passengers.

Q. That was the second time?

A. Yes, second time.

Q. What did you find then with respect to the hatches? A. The hatches were all right.

Q. Where were the chains?

A. Around the hatches and a rope on one side.

Q. When you went down on call that an accident had occurred, [164] where were the chains then?

A. The chains were still around the hatch. The only thing that was removed was the rope on one side.

Q. Which side of the hatch was that?

A. On the port side.

Q. And that rope was removed at the time that you went down at the time of the accident?

A. Yes, sir.

Q. And the accident had happened when you went down there?

A. Yes, sir; the accident had happened.

Q. Did you do anything with respect to this little girl who was on the upper deck, do anything with her?

A. No; all we did with her was to find out that she was the daughter of the man that fell in, and sent her

(Testimony of O. H. Otterson.)

ashore in the passenger boat and took the baggage that she had with her.

Q. When you went down at the time of the accident, right after it occurred, to help, did you say anything to the bos'n about the accident?

A. No, I never said anything to him; just asked him how it happened.

Q. And what did he say?

A. He just said the man fell in.

Q. It has been testified in this case that you told this man it was his fault for leaving the hatch open. What do you know about that?

A. I don't know anything about that.

Q. Did you tell him any such a thing?

A. No, not that I remember of. [165]

Q. Did you tell him anything at all except to ask him how it happened?

A. The only thing I asked him, I asked him how it happened. "Well," he said, "I told them to get away, but this fellow fell down."

Q. Now, as to the state of light or darkness, I want to ask you when that accident occurred and you went down there to assist, how was it, light or dark in the 'tween-decks there? A. Light; it was light yet.

Q. How light—can you give us an idea?

A. I could see everything without having the lights switched on down below.

Q. Any electric lights burning?

A. Burning in the cabin; yes.

Q. But in the 'tween-decks, did you notice?

(Testimony of O. H. Otterson.)

A. No, not in the 'tween-decks, no need of lights in the 'tween-decks.

Q. Have you any idea, can you give us your best judgment as to the time of day the accident occurred?

A. He was sent ashore about five-thirty; it must have been about five twenty-five or a little before that, because he was taken right out of the hold and sent right ashore.

Q. You didn't look at your watch?

A. No, I didn't look at the watch, but I got the time I sent the boat ashore.

Mr. WARREN.—Cross-examine. [166]

Cross-examination of O. H. OTTERSON.

Mr. DAVIS.—You say the lights were burning in the cabin, Mate. Do you know who turned them on?

A. The engineer starts the dynamo in order to get the fans going to air out the rooms, and at the same time the lights in the cabin are turned on.

Q. You don't know just what time it was, Mate?

A. About twenty to five, I guess.

Q. You don't know the exact hour, you didn't look at your watch? A. No, I didn't do that.

Q. And you are only just guessing about it?

A. But that time can be had from the engineers.

Q. Never mind about the engineers; you didn't know what time it was?

A. I know it was before the accident occurred.

Q. Yes, but what time it was when the accident actually occurred you don't know, you never looked at a watch?

(Testimony of O. H. Otterson.)

A. I know what time the man was sent ashore; he was sent ashore just after he was taken out of the hold.

Q. You didn't look at your watch?

A. Probably five minutes—

Q. But you didn't look at your watch?

A. The time was taken by the quartermaster.

Q. Never mind about the quartermaster, but you yourself didn't [167] look at your watch?

A. No, the time was taken by the quartermaster.

Q. I didn't ask you about the quartermaster; I asked you whether you looked at your watch?

A. I didn't look at a watch.

Q. No. How high is the ceiling,—say this is the floor of the deck, eh? Now, how high is it from where, standing there 'tween-decks up to the covering over the deck?

A. You mean from one deck to another?

Q. Yes, from one deck to another.

A. Five foot eight, or five foot eight and a half.

Q. Five foot eight or five foot eight and a half?

A. Yes, sir.

Q. I thought that was about it. Now, we will suppose that this witness-stand represents the hatch, see? Now, on the port-side of the hatch there was a rope instead of a chain, and that rope was down when you saw it.

Mr. WARREN.—Object to that.

Mr. DAVIS.—I asked if it was a rope instead of a chain.

A. Yes.

(Testimony of O. H. Otterson.)

Q. Now the rope was down?

A. Yes, because they were taking in cargo.

Q. On the port side? A. Yes.

Q. Now, which side of that hatch the man fell down you don't know because you wasn't there.

A. I wasn't there.

Q. And you didn't see the accident?

A. No, I didn't see the accident.

Q. And the rope was down and the whole side was open at the [168] time when you came down right after the accident?

A. Yes, after the accident when I came down the rope was down.

Q. And the man was insensible.

Mr. WARREN.—Objected to, your Honor, as not proper cross-examination.

Mr. DAVIS.—Was the man sensible or insensible?

The COURT.—The objection is that that is not proper cross-examination. He has not undertaken to testify anything about the condition of the man, there is no question about that.

Mr. DAVIS.—You took him out of the hold and put him in the boat and took him ashore?

A. Yes, sir.

Q. You assisted in that?

A. Yes, sir, I assisted in that.

Mr. DAVIS.—That will be all.

Redirect Examination of O. H. OTTERSON.

Mr. WARREN.—I want to ask you regarding this five feet eight and a half inches. Just what

(Testimony of O. H. Otterson.)

place have you in mind when you gave that distance of five feet eight and a half inches?

A. About five feet eight or eight and a half, I judge by my own height. My height is about five feet four and a half, and that's about four inches more.

Q. From what place to what other place? [169]

A. From one deck to another.

Q. And how high are you?

A. Five feet four and a half.

Mr. WARREN.—That is all.

Mr. DAVIS.—Come down and see the ship, your Honor.

Mr. WARREN.—I shall be very glad, if your Honor will, and size it up.

Mr. WARREN.—What time do you sail?

A. Five o'clock.

Mr. DAVIS.—I would ask for a continuance until Friday morning.

Mr. WARREN.—I would like to say that at the time Peneyra came here he had about three hundred dollars.

Mr. DAVIS.—The whole thing was explained to Judge Poindexter and it's for the purpose of keeping this little girl, in the hands of the guardian to keep this little girl.

Mr. WARREN.—And I want to ask leave to produce the discharge of this man from the asylum as soon as it is passed on by the commissioners as to the condition of this man.

The COURT.—Continuance is granted until Fri-

day at 10 o'clock, a week from to-day.

The court then continued the hearing of this cause until Friday, May 10, 1918, at 10 o'clock A. M.  
[170]

<sup>1828</sup>  
*In the United States District Court, in and for the  
Territory of Hawaii.*

AD.-172.

ANATALIO PENEYRA, an Insane Person, by  
ADRIANO BORHA, His Guardian at  
Litem,

Libellant,

vs.

The American Steamship "KINAU," Her Engines,  
Machinery, Boilers, Tackle, Boats, Furniture  
and Appurtenances,

Libellee.

Honolulu, H. T., May 10, 1918.  
10:00 A. M.

The COURT.—In view of the fact that the other interpreter is inaccessible, we will go ahead with this man, who is the interpreter at the Immigration Station.

Mr. WARREN.—He is an interested party in the case, being the guardian of the child appointed by the court, he is a valid agent. I certainly don't want, your Honor, to delay matters, but I do object to the plaintiff in this case acting as the interpreter.

Mr. DAVIS.—Ocampo is here. [171]

**Testimony of Mrs. Eduarda Penaira, for Libellant.**

Direct examination of Mrs. EDUARDA PEN-AIRA, for libellant, sworn.

Mr. DAVIS.—(Through Interpreter, Mr. A. F. OCAMPO.) Q. What is your name?

A. Penaira.

Q. What is her other name,—Katherine or what?

A. Eduarda.

Q. Now, where does she live, or, where do you live? A. Camp 7.

Q. Camp 7 where? A. Eleele, Kauai.

Q. And did you come from Kauai this morning on the steamer? A. Yes.

Q. Do you know Anatalio Peneyra?

A. Anatalio?

Q. Yes. A. Yes.

Q. The father of that little girl? A. Yes.

Q. How long have you known him?

A. Ever since he was born.

Q. Ever since he was born; how long have you known him on the Island of Kauai?

A. Since he came here over a year ago, that is, the month of August.

Q. Do you remember the 19th day of December, 1917, when Peneyro started to come to Honolulu?

A. I do.

Q. Yes; did you see him on that day before he started?

A. Yes, sir; he left my home. [172]

Q. Left your home; did he ever have any trouble mentally or physically, before that day?



(Testimony of Eduarda Penaira.)

Mr. WARREN.—Objected to as leading, and the witness is not competent.

Mr. DAVIS.—She seen him every day; her evidence can go in for what it is worth.

The COURT.—Overrule the objection.

Mr. DAVIS.—Did he have any mental or physical trouble before that day? I will follow that up.

A. No.

Q. What was he doing there before the 19th of December, what was he doing,—working on a plantation, or what?

The COURT.—Don't lead the witness.

A. He was a laborer.

Mr. DAVIS.—Labor where?

A. Plantation laborer.

Q. Did he live in the same place that you did, or where, how close to it?

A. Same camp, but at a different house.

Q. Same camp but different house; did you see him every day? A. Yes.

Q. For a period covering how long before the 19th of December?

A. Ever since he arrived from the Philippines two Augusts ago.

Q. And she saw him every day for two years?

A. Yes.

Q. Yes, and now what was the—is he a married man? A. His wife is dead.

Q. His wife is dead; now, you say you saw him every day until he started to come to Honolulu?

(Testimony of Eduarda Penaira.)

A. Yes, sir.

Q. Did he visit *hour* house, your room in the camp? A. Yes.

Q. And did you visit him? A. Yes.

Q. Yes, and that's his little girl there, is it?

A. Yes.

Q. What was his general reputation around the camp among the Filipino people there?

Mr. WARREN.—Objected to, your Honor, as incompetent, irrelevant and immaterial.

Mr. DAVIS.—Question withdrawn.

Q. Was he working every day or not?

A. Yes, every day.

on the 19th of December, 1917?

Q. Do you know why he was coming to Honolulu

Mr. WARREN.—Objected to as immaterial.

Mr. DAVIS.—I think it is competent.

The COURT.—Go ahead.

Mr. DAVIS.—It is only to ask if he had business there, your Honor.

A. Yes, I do.

Mr. DAVIS.—What was it?

A. To go back home.

Q. Oh, he was going back to the Philippine Islands, I see. A. Yes, sir.

Q. And he started for that purpose? A. Yes.

Q. Was there anything wrong with him at any time, did you notice anything wrong with him, mentally or physically from the time that you knew him—during all the time that you knew him down on that plantation?

(Testimony of Eduarda Penaira.)

Mr. WARREN.—Object to that question as incompetent, the witness [174] not being qualified to give an opinion as to his mental competency, and further that it is ambiguous and indefinite.

The COURT.—The presumption is that all people are sane until proven otherwise. Overrule the objection.

Mr. DAVIS.—Just state if you noticed anything wrong with him.

A. I didn't observe his mental condition.

Q. Did you see anything wrong with him?

A. No.

Q. But you saw him every day? A. Yes.

Q. Did you ever hear anybody question his sanity?

Mr. WARREN.—Objected to, your Honor, as immaterial and incompetent, hearsay.

Mr. DAVIS.—Because if there was anything wrong with him it would be known there.

Mr. WARREN.—You can't prove reputation like that.

Mr. DAVIS.—Hear anybody say he was acting queer or anything like that?

Mr. WARREN.—I think that is immaterial.

Mr. DAVIS.—I will take your Honor's ruling on it.

Q. Did he ever do any queer thing there that you noticed during the time you knew him?

Mr. WARREN.—Same objection.

Mr. DAVIS.—Out of the ordinary?

The COURT.—Overrule the objection.

A. No.

(Testimony of Eduarda Penaira.)

Mr. DAVIS.—From your knowledge of this man and from what you have seen of him from time to time during all that time [175] of two years, and from your intercourse with him and conversations with him, I want you to say whether he was sane or insane.

Mr. WARREN.—The same objection, your Honor; the witness cannot give an opinion as to whether the man was sane or insane.

Mr. DAVIS.—I submit she can; from observation or otherwise.

Mr. WARREN.—I will rest on my objection.

The COURT.—I think the question has been answered already. A nonexpert witness can testify whether a person is sane or insane. I think the matter is fully gone into.

Mr. DAVIS.—I will take your Honor's ruling. Take the witness and cross-examine.

Cross-examination of Mrs. EDUARDA PENAIRA.

Mr. WARREN.—(Through Interpreter.) Q. This Camp 7 at Eleele, what sugar plantation is that?

A. Sugar-cane plantation.

Q. What is the name of the company?

A. I don't know.

Q. Who is plantation boss, or manager?

A. I don't know his name, but I know the Luna's name.

Q. You know the Luna's name, but you don't know who is manager of the plantation?

A. I do not.

(Testimony of Eduarda Penaira.)

Q. Now, you say this Anatalio worked every day prior to the time he left for Honolulu? [176]

A. Yes, very few Sundays that he doesn't work.

Q. Now, when he didn't work what was the reason—was he sick or was he just laying off?

A. Well, he works almost every day, sometimes he work on Sunday, and then take a rest—

Q. No; my question was, when he did not work.

A. And sometimes he goes out and gets firewood.

Q. When he didn't work, what was the reason? That is my question.

A. To get some firewood.

Q. So that he was never sick at any time at all that you remember, in that whole year and a half or two years. A. No, never sick.

Q. Never had treatment from the plantation doctor there? A. No.

Q. Now, do you know that or is that just what you think?

A. Ever since arriving at this plantation I did not observe that he was sick; I didn't know he was sick.

Q. Well, could he have been sick and you not have known it?

A. I am certain he never been sick ever since he arrived.

Q. All right, you know that of your own knowledge? A. Yes.

Q. All right; how many people living together in the house with you? A. Crispinio Pinairo,—

Q. I don't want their names, I want to know the number of people. A. Four at that time.

(Testimony of Eduarda Penaira.)

Q. Now, Anatalio would come over from his house to your house [177] and visit and talk with the people there? A. Yes.

Q. Did he sit down and smoke, or walk around—was he active or quiet?

A. Whenever he goes to the house he sitting down there and talk with us, and when they are through he went to his home.

Q. When you left Kauai to come over here and testify, did you know what you were coming for?

A. I do.

Q. How did you find out?

A. Yes, because those friends that supposed to go with him to the Philippines wrote me a letter and stated the occasion.

Q. Who was that friend?

A. Frederico Pasco.

Q. Frederico Pasco?

A. He has gone back now to the Philippines.

Q. When did he go?

A. I do not recollect the day that he left for the Philippines, but they left the same day.

Q. I am asking you when you left the plantation to come over to Honolulu here and testify in this case, did you know what you were coming for?

A. I do.

Q. What were you coming for?

A. Anatalio Peneyra.

Q. Did you know what you were coming to testify about? A. Yes.

Q. How did you find that out?

(Testimony of Eduarda Penaira.)

A. The lawyer came and notified me to come to Honolulu.

Q. What did the lawyer tell you? [178]

A. You go to Honolulu because the Judge there needs you for Anatalio Peneyra.

Q. Yes, did the lawyer talk with you about what kind of testimony he wanted, or what you were going to testify to when you got on the witness-stand?

A. He did not.

Q. After you got here did you have a talk with anybody here about what you were going to testify about this morning? A. No.

Q. Not with anybody, not even with Judge Davis?

Mr. DAVIS.—I didn't see her; the boat just got in.

A. No.

Mr. WARREN.—With Adriana Borha?

A. No.

Mr. WARREN.—I see; that is all.

Redirect Examination of Mrs. EDUARDA  
PENAIRA.

Mr. DAVIS.—From what you have seen and observed of this man from time to time—from day to day, and your knowledge of him, do you believe him to be sane or insane?

Mr. WARREN.—I object to that as not proper redirect examination, your Honor.

Mr. DAVIS.—I ask your Honor to ask the question, to allow me to ask the question unless you think it has already been answered.

The COURT.—I don't know but what a nonexpert

(Testimony of Eduarda Penaira.)

has a right to testify wherever he shows he has sufficient connection [179] with him and seen him often enough to have an opinion, or justified in forming an opinion, but this witness has been questioned fully in regard to that matter and stated there was nothing the matter with him physically or mentally.

Mr. DAVIS.—I will take your Honor's ruling, your Honor.

Mr. WARREN.—I would like to ask another question, if I may.

The COURT.—Yes.

Mr. WARREN.—I want to ask you, what relation are you to Anatalio?

A. He is a cousin of mine.

Mr. WARREN.—All right; that is all. [180]

### Testimony of Leonardo Pinara, for Libellant.

Direct examination of LEONARDO PINARA, for libellant, sworn.

Mr. DAVIS.—(Through the Interpreter, Mr. A. F. OCAMPO.) Q. What is your name?

A. Leonardo Pinara.

Q. Where do you live? A. Here.

Q. You live in—did you come from Kauai this morning? A. Yes.

Q. From what plantation, Eleele? A. Eleele.

Q. Did you know Anatalio Peneyra?

A. Yes, sir.

Q. How long have you known him?

A. Ever since he was born.

Q. Know him for the last two years?



(Testimony of Leonardo Pinara.)

Mr. WARREN.—I object to that as superfluous.

The COURT.—Yes. Perhaps you mean has he been associated with him the last two years?

A. Yes.

Mr. DAVIS.—Did you visit him during the last two years? A. Yes.

Q. Did you see him pretty nearly every day, or how often? A. I saw him every day.

The COURT.—During the last two years?

A. Yes.

Mr. DAVIS.—Now, on the 17th, or the 19th, of December did he start to leave the Island of Kauai?

A. Yes.

Q. Do you remember the day he left? [181]

A. After we got our bonus.

Q. Yes, and did you see him on that day?

A. I did.

Q. Now, just tell the Court, without any assistance from me, what his mental and physical condition was on that day?

Mr. WARREN.—I object to that as incompetent, the witness not being qualified to answer a question like that.

Mr. DAVIS.—I submit it is perfectly competent, a nonexpert can answer his belief; he seen him every day and visited him.

The COURT.—I think it is admissible, overrule the objection.

Mr. DAVIS.—Just answer the question.

A. He is a good man.

Q. Was he all right mentally and physically?

(Testimony of Leonardo Pinara.)

Mr. WARREN.—The same objection, your Honor; I don't want to renew it all the time, but the same objection applies to all these questions.

Mr. DAVIS.—How was he mentally and physically?

The COURT.—All right, Mr. Warren.

A. He was in perfect mental condition.

Mr. DAVIS.—Now, did you ever see anything wrong with him during the two years you saw him working there? A. No.

Q. Did you see him after he was hurt?

A. I did not.

Q. Didn't see him after he was hurt, but on the day he started to go away you did see him?

A. I did.

Q. Where was he going, do you know?

A. I do. [182]

Q. Where was he going?

A. He was going back to the Philippines.

Q. Back to the Philippines; and were you working on the plantation with him, or what was you doing?

A. Working same plantation, but different Luna altogether.

Q. You were working on the same plantation as well as him, on the same plantation?

A. Yes, but different Luna.

Q. But you saw him every day pretty nearly?

A. Yes.

Q. Is this his little girl sitting here?

A. That is his daughter.

(Testimony of Leonardo Pinara.)

Q. Did you ever know him to be sick during the last two years up to the time he was hurt?

A. No.

Mr. DAVIS.—Take the witness.

Cross-examination of LEONARDO PINARA.

Mr. WARREN.—What relation are you to Anatalio Peneyra? A. He is my uncle.

Q. Did you come from the Philippines with him?

A. He came first, and I came afterwards.

Q. Ever since you came from the Philippines you have been on the same plantation? A. Yes, sir.

Q. How long ahead of you was it that he came to the plantation? [183]

A. One year ahead.

Q. When did you come?

A. I arrived in Kauai plantation on August 17th of last year.

Q. And he came one year before that? A. Yes.

Mr. WARREN.—That is all.

Mr. DAVIS.—On behalf of Judge Banks and myself, we wish to submit this case, and we are willing, if your Honor please, to submit it without argument. I am willing to submit it either with or without argument.

Mr. WARREN.—Before discussing that phase of it, your Honor, I would like to file duplicate of certificate of the Commissioners of Insanity, adjudging this man sane and discharged. I now offer certificate of sanity of the Commissioners of Insanity, dated May 3, 1918, adjudging this man, Anatalio

(Testimony of Leonardo Pinara.)

Peneyra, sane, and discharging him from the asylum.

Mr. DAVIS.—Yes, you are one of the commissioners, aren't you? We have no objection, your Honor. Is he out?

Mr. WARREN.—I don't know. But what was that remark, Mr. Davis?

Mr. DAVIS.—If he has a certificate of discharge, your Honor, he should be out of the institution.

Mr. WARREN.—The insinuation goes not to me, but to the commission on insanity, and I take exception to it on behalf of the Commissioners of Insanity of the Territory of Hawaii.

Mr. DAVIS.—If the man is discharged he should have left the institution.

The COURT.—I am not concerned with that.

Mr. DAVIS.—He is. [184]

Mr. WARREN.—I am concerned with the reflections cast upon the Commissioners.

Mr. DAVIS.—No reflections, but he ought to be out; I reiterate it.

Mr. WARREN.—Let me add, your Honor, that Doctor Schwallie, the Superintendent of the Insane Asylum, have told me that these people have been anxious to get hold of him, have been anxious to get word to him, anxious to know when he would get out and wanted the certificate as soon as possible, and I requested the other commissioners to get the certificate as soon as possible and the man has been ready for discharge from that moment, and if he has not

(Testimony of Leonardo Pinara.)

been released it is because they have not cared to go out and find out.

Mr. DAVIS.—It is rather strange, though, isn't it?

Mr. WARREN.—If your Honor has sufficient recollection of the testimony, very well, but I am perfectly willing, if your Honor desire it, to furnish a summary of the evidence.

The COURT.—I would rather the case be argued.

Mr. DAVIS.—When would your Honor like to have it?

The COURT.—Monday morning.

Mr. WARREN.—No brief.

Mr. DAVIS.—I waive my right to file a brief.

The COURT.—You can if you want to.

Mr. WARREN.—The rules call for one unless it is otherwise directed.

Mr. DAVIS.—I will waive my right if he waives his.

The COURT.—All right; ten o'clock Monday morning. [185]

Honolulu, H. T., July 1, 1918.

I hereby certify that the foregoing transcript of testimony consisting of one hundred and sixty-one (161) typewritten pages, is a full, true, and accurate transcript of my shorthand notes of the testimony taken and the proceedings had upon the trial of the case of Anatalio Peneyra, an Insane Person, by His Guardian, Adriana Borha, His Guardian Ad Litem, vs. The American Steamship "Kinau," Her En-

gines, etc., upon the days and at the times in said transcript mentioned.

H. F. NIETERT,  
Official Reporter U. S. District Court. [186]

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*In the United States District Court for the Territory of Hawaii.*

**Testimony of Anatalio Peneyra, Taken Before  
Judge Vaughan, May 13, 1918.**

Testimony of ANATALIO PENEYRA taken before Judge VAUGHAN May 13th, 1918.

(Questioned by Judge VAUGHAN. Answered through interpreter.)

Q. What is your name?      A. Anatalio Peneyra.

Q. Where were you born?

A. Occidental—in the Philippine Islands.

Q. How old are you?

A. Forty years old, this year, 1918.

Q. What day of the year?

A. This coming December I will be forty.

Q. What day in December?

A. The first day of next December.

Q. Were you born in the Philippines?

A. Yes.

Q. When did you come to Honolulu?

A. In 1916.

Q. As a plantation laborer?      A. Yes.

Q. You lived on the Island of Kauai?      A. Yes.

Q. You got tired and wanted to go home?

(Testimony of Anatalio Peneyra.)

A. Yes.

Q. You wanted to go back to the Philippines?

A. Yes. That was my intention if allowed to do so.

Q. After you started on your journey, what was the matter?

A. The owners of the ship send me to a certain place which I don't know the place and from there I come to Honolulu. I don't know the place.

Q. Were you sick at the time you started to leave to go on the [187] trip? A. No.

Q. Are you married? A. My wife is dead.

Q. When did your wife die?

A. My second wife died about seven years ago.

Q. Have you got a third one? A. No.

Q. Is the little girl your little girl? A. Yes.

Q. You were taking her home to the Philippines?

A. Yes.

Q. And you got on the boat to go? A. Yes.

Q. Did you have a ticket? A. Not yet.

Q. Did you have a ticket at the time you got on board? A. I wasn't given yet a ticket.

Q. Did you take your little girl on the boat with you? A. Yes.

Q. Did you walk up on the upper deck?

A. We did.

Q. Did you leave the little girl on the upper deck?

A. Yes.

Q. And you went down to see about your baggage?

A. Yes.

Q. That's what you went down for? A. Yes.

(Testimony of Anatalio Peneyra.)

Q. Did you remember when you fell on the steamer? A. I did.

Q. You remember falling? A. Yes.

Q. How came you to fall? A. I was dizzy.

Q. Were you facing towards the hatch when you fell? [188] A. Yes.

Q. You were facing the hatch? A. Yes.

Q. Did you fall forward through the hold or hatch? A. Yes.

Q. Because you were dizzy? A. Yes.

Q. Did you fall backwards through it? A. No.

Q. When you fell do you remember them picking you up? A. Yes.

Q. You remember them picking you up after you fell? A. I do.

Q. You remember them picking you up out of the hatch and taking you back on the shore?

A. Yes.

Q. You remember that? A. Yes.

Q. Did you know at that time they were taking you back to the shore? A. Yes.

Q. Did you have them take your little girl with you? A. Yes.

Q. Was the little girl taken back on shore?

A. Yes.

Q. How did you get back from the ship to the shore?

A. The boss of the steamer ordered me to go ashore.

Q. Are you crazy? A. No.

Q. Have you been crazy? A. No.



(Testimony of Anatalio Peneyra.)

Q. Did you know that you were out here at the asylum? A. Yes.

Q. What were you doing out at the asylum?  
[189]

A. I was out there simply sitting around.

Q. Did you know what you were doing there?

A. I was doing nothing. The American told me to go out to work but I worked only a month.

Q. When you fell on the ship were you squatting down or were you standing up?

A. At that time I was standing up—when I got dizzy I stooped down.

Q. Was the hatch open? A. Yes.

Q. Was there a rope around it? A. Yes.

Q. How many sides—was the rope around all four sides of the hatch?

A. Yes, the rope was around all four sides.

Q. When you fell in? A. Yes.

Witness dismissed.

Dated at Honolulu, T. H., May 13th, 1918. [190]

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In the United States District Court for the Territory of Hawaii. In Admiralty—In Rem. Natalio Peneyra, by Adriano Borha, His Guardian Ad Litem, Libellant, vs. The American Steamship "Kinau," etc., Libellee, and Inter-Island Steam Navigation Co., Ltd., Owner and Claimant of Said Steamship. George A. Davis, Proctor for Libellant. L. J. Warren, Proctor for Libellee. Horace W.

Vaughan, Judge. Dated Honolulu, T. H., May 20, 1918. Filed May 20, 1918. A. E. Harris, Clerk. By (Sgd.) Wm. L. Rosa, Deputy Clerk. [191]

*In the United States District Court for the Territory  
of Hawaii.*

IN ADMIRALTY—IN REM.

NATALIO PENEYRA, by ADRIANO BORHA,  
His Guardian Ad Litem,

Libellant,

vs.

The American Steamship "KINAU," etc.,

Libellee,

and

INTER-ISLAND STEAM NAVIGATION CO.,  
LTD., Owner and Claimant of Said Steam-  
ship.

**Opinion.**

May 13th, 1918, proctors for libellant presented the said Natalio Peneyra for examination by the Court touching his mental condition. The evidence had not been closed; but proctors for libellant requested the Court to examine him, claiming he was still insane, and the Court examined him through an interpreter, and the questions propounded by the Court and the answers of said Peneyra were taken down by a reporter.

The Court questioned said Peneyra about the circumstances and cause of his injuries for which this suit is brought. The statements made by him in re-

ply were in substance and effect as follows: that he was intending to return to the Philippine Islands and boarded the "Kinau" with his little girl to go to Honolulu for that purpose; that after he got on the ship he left his little girl on the upper deck and went below for the purpose of looking after his baggage; and that while he was standing near the hatch, which was open, looking into it, he became dizzy and started to squat down, and fell into it; that the rope was [192] around all four sides of the hatch at the time he fell into it; that he did not fall into it backwards; that his face was towards it when he fell and that he fell forward; that he remembered being picked up and taken ashore; that he is not insane and has not been. This statement of the said Natalio Peneyra refutes the claim that his fall and injuries were occasioned by negligence. Should this statement be considered or credited? His proctors insist that it should be disregarded. Evidence introduced on his behalf as well as evidence introduced by the libellee and claimant proves that the said Natalio Peneyra is now sane. The only evidence that he ever was insane is the adjudication upon which he was committed to the asylum. If he ever was insane he has recovered.

It is the opinion of the Court that the action should proceed in the name of the real party in interest, the said Natalio Peneyra; and it is also the opinion of the Court that the statements made by the said Natalio Peneyra should be considered as declarations against interest. It is also the opinion of the Court from all the evidence, that the injuries

of the said Natalio Peneyra were not caused by any negligence or failure of duty on the part of the steamship, its owners or officers, and that the said Natalio Peneyra is not entitled to recover any damages on account of said injuries.

(Sgd.) HORACE W. VAUGHAN,  
Judge United States District Court.

Dated at Honolulu, T. H., May 20, 1918. [193]

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No. 172. In the District Court of the United States for the Territory of Hawaii. In Admiralty—In Rem. Natalio Peneyra, an Insane Person, by Adriano Borha, His Guardian Ad Litem, Libellant, vs. The American Steamship "Kinau," Her Engines, etc., Libellee, and Inter-Island Steam Navigation Company, Limited, Owner and Claimant. Decree. Smith, Warren & Whitney, 207 Bank of Hawaii Building, Honolulu, Hawaii, Proctors for Libellee and Claimant. Filed May 23, 1918, at 10 o'clock and 30 minutes A. M. A. E. Harris, Clerk. By (Sgd.) Wm. L. Rosa, Deputy Clerk. [194].

*In the District Court of the United States in and  
for the Territory of Hawaii.*

IN ADMIRALTY—IN REM.

NATALIO PENEYRA, an Insane Person, by  
ADRIANO BORHA, His Guardian Ad  
Litem,

Libellant,

vs.

The American Steamship "KINAU," Her Engines,  
Machinery, Boilers, Tackle, Apparel, Boats,  
Furniture and Appurtenances,

Libellee,

and

INTER-ISLAND STEAM NAVIGATION COM-  
PANY, LIMITED,

Owner and Claimant.

**Decree.**

The above-entitled cause having heretofore come on regularly to be heard before the undersigned Judge of this court, Messrs. George A. Davis and J. J. Banks appearing as proctors for the libellant and L. J. Warren, Esq., of the firm of Smith, Warren & Whitney, appearing on behalf of the libellee and claimant; and the said cause having been tried and on the 13th day of May, 1918, submitted for decision; and the Court having rendered and filed its decision in said cause on the 20th day of May, 1918, holding that the injuries to the libellant were not caused by

any negligence or failure of duty on the part of the libellee, and that said libellant is not entitled to recover any damages on account thereof; [195]

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that judgment in said cause be and the same is hereby entered therein in favor of the libellee and claimant and against said libellant; and that said action be and the same is hereby dismissed with costs taxed against the libellant in the sum of \$99.55, of which sum \$39.45 is hereby required to be paid by him to the clerk of this Court and the remaining sum of \$60.10 paid to the proctors for the libellee and claimant as costs due said libellee and claimant.

And the Court being satisfied and having found that the said Natalio Peneyra (in the initial pleadings herein named as "Anatalio Pinira") was a sane person, on the 13th day of May, 1918, and now still is a sane person:

IT IS HEREBY FURTHER ORDERED AND DECREED that the above-named Adriano Borha, as guardian *ad litem* of the said Natalio Peneyra as libellant in this cause, be and he is hereby discharged as such guardian *ad litem*; and that any and all further proceedings which may be had or taken in said cause shall be had and taken by and in the name of said Natalio Peneyra.

Dated Honolulu, Hawaii, May 23d, 1918.

(Sgd.) HORACE W. VAUGHAN,  
Judge of the United States District Court in and for  
the Territory of Hawaii. [196]

Filed May 23d, 1918, at 10 o'clock and 55 minutes  
A. M. (Sgd.) A. E. Harris, Clerk.

*In the District Court of the United States for the  
Territory of Hawaii.*

No. —.

IN ADMIRALTY—IN REM.  
NATALIO PENEYRA,

Libellant,

vs.

The American Steamship "KINAU," Her Engines,  
Machinery, Boilers, Tackle, Apparel, Boats,  
Furniture and Appurtenances,

Libellee,

and

INTER-ISLAND STEAM NAVIGATION COM-  
PANY, LIMITED, Bailee and Claimant  
Thereof,

and

INTER-ISLAND STEAM NAVIGATION COM-  
PANY, LIMITED, a Corporation, Owner  
Thereof.

**Notice of Appeal (Natalio Peneyra).**

To the Above-named Libellee and Inter-Island Steam  
Navigation Company, Limited, Bailee and  
Claimant Thereof, and the Inter-Island Steam  
Navigation Company, Limited, a Corporation,  
Owner Thereof, and Its Proctor:

You and each of you, and it, are hereby notified

that the above-named libellant intends to and does hereby appeal from the final decree of the United States District Court in and for the Territory of Hawaii entered in the above-entitled suit on the 23d day of May, A. D. 1918, to the United States Circuit Court of Appeals for the Ninth Circuit. [197]

Dated at Honolulu and Territory of Haawaii, this 23d day of May, A. D. 1918.

(Sgd.) NATALIO PENEYRA,  
Libellant-Appellant.

(Sgd.) GEO. A. DAVIS,

(Sgd.) J. J. BANKS,

Proctors for the Libellant.

Received copy of the foregoing notice of appeal this 23 day of May, A. D. 1918.

(Sgd.) SMITH, WARREN & WHITNEY,  
Proctors for Libellee-Appellee.

I hereby allow this appeal.

May 23d, 1918.

(Sgd.) HORACE W. VAUGHAN,  
Judge U. S. District Court for Hawaii. [198]

Filed May 23, 1918, at 10 o'clock and 55 minutes  
A. M. (Sgd.) A. E. Harris, Clerk.



*In the District Court of the United States for the  
Territory of Hawaii.*

No. —.

IN ADMIRALTY—IN REM.

NATALIO PENEYRA, an Insane Person, by  
ADRIANO BORHA, His Guardian Ad  
Litem,

Libellant,

vs.

The American Steamship "KINAU," Her Engines,  
Machinery, Boilers, Tackle, Apparel, Boats,  
Furniture and Appurtenances,

Libellee,

and

INTER-ISLAND STEAM NAVIGATION COM-  
PANY, LIMITED, Bailee and Claimant  
Thereof,

and

INTER-ISLAND STEAM NAVIGATION COM-  
PANY, LIMITED, a Corporation, Owner  
Thereof.

**Notice of Appeal (Natalio Peneyra, an Insane  
Person, etc.)**

To the Above-named Libellee and Inter-Island Steam  
Navigation Company, Limited, Bailee and  
Claimant Thereof, and the Inter-Island Steam  
Navigation Company, Limited, a Corporation,  
Owner Thereof, and Its Proctors:

You and each of you, and it, are hereby notified that the above-named libellant intends to and does hereby appeal from the final decree of the United States District Court in and for the Territory of Hawaii entered in the [199] above-entitled suit on the 23d day of May, A. D. 1918, to the United States Circuit Court of Appeals for the Ninth Circuit.

Dated at Honolulu, District and Territory of Hawaii, this 23d day of May, A. D. 1918.

NATALIO PENEYRA,  
By ADRIANO BORHA,  
His Guardian ad Litem.

GEO. A. DAVIS,  
J. J. BANKS,

Proctors for the Libellant.

Received a copy of the foregoing notice of appeal on this 23d day of May, A. D. 1918.

SMITH, WARREN & WHITNEY,  
Proctors for Libellee, Claimant and Owner.

I hereby allow this appeal, upon petition of proctors for libellant.

(Sgd.) HORACE W. VAUGHAN,  
Judge U. S. District Court for Hawaii. [200]

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Filed May 23, 1918, at 10 o'clock and 55 minutes  
A. M. (Sgd.) A. E. Harris, Clerk.

In the District Court of the United States for the  
Territory of Hawaii.

No. —.

IN ADMIRALTY—IN REM.

NATALIO PENEYRA, an Insane Person, by AD-  
RIANO BORHA, His Guardian Ad Litem,  
Libellant-Appellant.

vs.

The American Steamship "KINAU," Her Engines,  
Machinery, Boilers, Tackle, Apparel, Boats,  
Furniture and Appurtenances,

Libellee,

and

INTER-ISLAND STEAM NAVIGATION COM-  
PANY, LIMITED, Bailee and Claimant  
Thereof,

and

INTER-ISLAND STEAM NAVIGATION COM-  
PANY, LIMITED, a Corporation, Owner  
Thereof,

Appellees.

**Bond on Appeal of Natalio Peneyra, an Insane  
Person, etc.**

KNOW ALL MEN BY THESE PRESENTS:  
That we, Natalio Peneyra, an insane person, by  
Adriano Borha, his guardian *ad litem*, libellant-  
appellant in the above-entitled suit, as principal,  
and K. Hamamura and Frank Nichols, as sureties,  
are held and firmly bound unto Inter-Island Steam  
Navigation Company, Limited, a corporation, bailee

and claimant of the American steamship "Kinau," her engines, machinery, boilers, tackle, apparel, boats, furniture and appurtenances, and Inter-Island Steam Navigation Company, Limited, claimant and owner of said steamship, appellees, in the sum of Seven Hundred Fifty Dollars (\$750.00) to be paid to the said [201] Inter-Island Steam Navigation Company, Limited, a corporation, bailee, claimant and owner of said steamship, appellee herein, its successors or assigns, to which payment well and truly to be made we bind ourselves and each of us, our and each of our respective heirs, executors, administrators and assigns, firmly by these presents.

Sealed with our seals and dated at the City and County of Honolulu, in the District and Territory of Hawaii, this 23d day of May, A. D. 1918.

WHEREAS, the above-named Natalio Peneyra, an insane person, by Adriano Borha, his guardian *ad litem*, the libellant-appellant in this suit, has appealed to the United States Circuit Court of Appeals for the Ninth Circuit, from the final decree in this suit, made and entered up in favor of the libellee and appellee above named by the United States District Court for the Territory of Hawaii and duly filed in said Court on the 23d day of May, A. D. 1918, by the above-entitled Court, praying that said decree may be reversed.

NOW, THEREFORE, the condition of this obligation is such that if the above-named libellant-appellant aforesaid shall prosecute his appeal to effect and shall answer all costs to which the libellee-appellees may be entitled, if he fails to make good

his appeal, and if he shall abide by and perform whatever decree may be rendered by the United States Circuit Court of Appeals for the Ninth Circuit in this cause, or on the mandate of the United States Circuit Court of Appeals for the Ninth Circuit by the United States District Court for the Territory of Hawaii, then this obligation shall be void; otherwise the same shall remain in full force and effect. [202]

IN WITNESS WHEREOF, the aforesaid principal and the aforesaid sureties have hereunto set their hand and seal at Honolulu, in the City and County of Honolulu, District and Territory of Hawaii, this 23d day of May, A. D. 1918.

NATALIO PENEYRA,

An Insane Person,

By (Sgd.) ADRIANO BORHA,

His Guardian Ad Litem.

(Sgd.) K. HAMAMURA,

(Sgd.) FRANK NICHOLS,

Sureties.

Signed and sealed in the presence of

(Sgd.) GEO. S. CURRY.

The foregoing bond is approved as to form, amount and sufficiency of sureties.

Dated at Honolulu, in the district and Territory of Hawaii, this 23 day of May, A. D. 1918.

(Sgd.) HORACE W. VAUGHAN,

Judge of the United States District Court for the District and Territory of Hawaii. [203]

**Notice of Filing of Bond on Behalf of Natalio Peneyra, an Insane Person, etc.**

To Inter-Island Steam Navigation Company, Limited, a Corporation, Bailee, Claimant and Owner of the American Steamship "Kinau," Her Engines, etc., Appellee in this Suit, and to Its Proctors and Attorneys, Messrs. Smith, Warren and Whitney.

You and each of you are hereby notified that the appellant in this suit, Natalio Peneyra, an insane person, by Adriano Borha, his guardian *ad litem*, has filed in the United States District Court for the Territory of Hawaii, a bond in the sum of Seven Hundred Fifty Dollars (\$750.00) in accordance with the rules in Admiralty of the United States Circuit Court of Appeals for the Ninth Circuit, and the names and residences of the sureties who have executed said bond on appeal in this suit, a copy of which is attached hereto, and made a part hereof, are as follows: K. Hamamura resides and does business at Numbers 100 and 102 North Beretania Street, in said Honolulu, and his postoffice address is Post Office Box 825, Honolulu; and the said Frank Nichols resides and lives at Silent Hotel, so called, on Hotel Street, opposite Union Street, in said Honolulu, and they are the sureties on said bond filed in this court in this suit on appeal from the final decree made and entered herein in the United States District Court for the Territory of Hawaii, and from which final decree the said libellant has appealed and filed his notice of appeal.

Dated at Honolulu, this 23d day of May, A. D.  
1918.

NATALIO PENEYRA,  
An Insane Person,  
By His Guardian Ad Litem,  
ADRIANO BORHA,  
By (Sgd.) GEO. A. DAVIS,  
His Proctor. [204]

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Filed May 23, 1918, at 12 o'clock M. A. E. Har-  
ris, Clerk. By (Sgd.) Wm. L. Rosa, Deputy Clerk.  
*In the District Court of the United States for the  
Territory of Hawaii.*

No. —.

IN ADMIRALTY—IN REM.

NATALIO PENEYRA,

Libellant-Appellant.

vs.

The American Steamship "KINAU," Her Engines,  
Machinery, Boilers, Tackle, Apparel, Boats,  
Furniture and Appurtenances,

Libellee,

and

INTER-ISLAND STEAM NAVIGATION COM-  
PANY, LIMITED, Bailee and Claimant  
Thereof,

and

INTER-ISLAND STEAM NAVIGATION COM-  
PANY, LIMITED, a Corporation, Owner  
Thereof,

Appellees.

**Bond on Appeal of Natalio Peneyra.**

KNOW ALL MEN BY THESE PRESENTS: That we, Natalio Peneyra, libellant-appellant in the above-entitled suit, as principal, and K. Hamamura and Frank Nichols, as sureties, are held and firmly bound unto the Inter-Island Steam Navigation Company, Limited, a corporation, bailee and claimant of the American steamship "Kinau," her engines, machinery, boilers, tackle, apparel, boats, furniture and appurtenances, and the Inter-Island Steam Navigation Company, Limited, claimant and owner of said steamship, appellees, in the sum of Seven Hundred Fifty Dollars (\$750) to be paid to the said Inter-Island Steam Navigation Company, Limited, a corporation, bailee, claimant and owner of said steamship, appellee herein, its successors [205] and assigns, to which payment well and truly to be made we bind ourselves and each of us, our and each of our respective heirs, executors, administrators and assigns, firmly by these presents.

Sealed with our seals and dated in the City and County of Honolulu, in the District and Territory of Hawaii, this 23d day of May, A. D. 1918.

WHEREAS, the above-named Natalio Peneyra, the libellant-appellant in this suit, has appealed to the United States Circuit Court of Appeals for the Ninth Circuit, from the final decree in this suit, made and entered up in favor of the libellee and appellee above-named by the United States District Court for the Territory of Hawaii and duly filed in said court on the 23d day of May, A. D. 1918, by the



above-named court, praying that said decree may be reversed.

NOW, THEREFORE, the condition of this obligation is such that if the above-named libellant-appellant aforesaid shall prosecute his appeal to effect and shall answer all costs to which the libellee-appellees may be entitled, if he fails to make good his appeal, and if he shall abide by and perform whatever decree may be rendered by the United States Circuit Court of Appeals for the Ninth Circuit in this cause or on the mandate of the United States Circuit of Appeals for the Ninth Circuit by the United States District Court for the Territory of Hawaii, then this obligation shall be void; otherwise the same shall remain in full force and effect.

[206]

IN WITNESS WHEREOF, the aforesaid principal and the aforesaid sureties have hereunto set their hand and seals at Honolulu, in the City and County of Honolulu, District and Territory of Hawaii, this 23d day of May, A. D. 1918.

(Sgd.) NATALIO PENEYRA,  
Principal.

(Sgd.) K. HAMAMURA,  
(Sgd.) FRANK NICHOLS,  
Sureties.

Signed and sealed in the presence of,

(Sgd.) GEO. S. CURRY.

The foregoing bond is approved as to form, amount and sufficiency of sureties.

Dated Honolulu, in the District and Territory of

Hawaii, this 23d day of May, A. D. 1918.

(Sgd.) HORACE W. VAUGHAN,  
Judge of the United States District Court for the  
District and Territory of Hawaii. [207]

**Notice of Filing of Bond on Appeal of Natalio  
Peneyra.**

To Inter-Island Steam Navigation Company, Limited, a Corporation, Bailee, Claimant and Owner of the American Steamship "Kinau," Her Engines, etc., Appellee, and to Messrs Smith, Warren and Whitney, Its Attorneys and Proctors.

You and each of you are hereby notified that the appellant in this suit, Natalio Peneyra, has filed in the United States District Court for the Territory of Hawaii, a bond in the sum of Seven Hundred Fifty Dollars (\$750.00), in accordance with the rules in Admiralty of the United States Circuit Court of Appeals for the Ninth Circuit, and the names and residences of the sureties who have executed said bond on appeal in this suit, a copy of which is attached hereto, and made a part hereof, are as follows: K. Hamamura resides and does business at Numbers 100 and 102 North Beretania Street, in said Honolulu, and his postoffice address is Post Office Box 825; and the said Frank Nichols resides and lives at Silent Hotel, so called, on Hotel Street, opposite Union Street, in said Honolulu, and they are the sureties on said bond filed in this court in this suit on appeal from the final decree made and entered herein in the United States District Court

for the Territory of Hawaii, and from which final decree the said libellant has appealed and filed his notice of appeal.

Dated, Honolulu, T. H., this 25 day of May, A. D. 1918.

NATALIO PENEYRA,  
(Sgd.) By GEO. A. DAVIS,  
His Proctor. [208]

In the United States District Court for the Territory of Hawaii. In Admiralty.—In Rem. Anatalio Pinira, an Insane Person, by Adriano Borha, His Guardian, Ad Litem, Libellant, vs. The American Steamship "Kinau," Her Engines, Machinery, Boilers, Tackle, Apparel, Boats, Furniture and Appurtenances, Libellee. Order Allowing Appeal. Filed May 24, 1918. A. E. Harris, Clerk. By (Sgd.) Wm. L. Rosa, Deputy Clerk. [209]

*In the United States District Court for the Territory of Hawaii.*

IN ADMIRALTY—IN REM.

ANATALIO PINIRA, an Insane Person, by  
ADRIANO BORHA, His Guardian, Ad  
Litem,

Libellant,

vs.

The American Steamship "KINAU," Her Engines,  
Machinery, Boilers, Tackle, Apparel, Boats,  
Furniture and Appurtenances,

Libellee.

**Order Allowing Appeal.**

Whereas, on the 11th day of March, 1918, a libel was filed instituting this suit in the name of Anatalio Pinira, as an insane person, by Adriano Borha, as his guardian *ad litem*, as libellant against the American steamship "Kinau," her engines, machinery, boilers, tackle, apparel, boats, furniture and appurtenances, as libellee, and whereas, thereafter by amendment the title to the suit was corrected and stated as, Natalio Peneyra, an insane person, by Adriano Borha, his guardian *ad litem*, etc., and whereas, the Inter-Island Steam Navigation Company, Ltd., appeared and filed claim, and whereas, the said suit thereafter proceeded in the name and style of Natalio Peneyra, an insane person, by Adriana Borha, his guardian *ad litem*, etc., until the 13th day of May, 1918, and whereas, on the said 13th day of May, the Court after hearing evidence found that the said Natalio Peneyra was then sane and ordered that further proceedings in this suit be had in the name of the said Natalio Peneyra, and whereas, in the final decree it was ordered and decreed that said guardian *ad litem* be discharged and that all further proceedings should be had and taken in the name of the said Natalio Peneyra, and whereas, the said Natalio Peneyra has duly filed notice of appeal from said [210] final decree by himself and also by said guardian *ad litem*, and whereas, the said Natalio Peneyra desires to appeal from the said decree both in his own name and in the name of his guardian *ad litem* and in his own person and by his guardian *ad*

*litem*, and whereas, the said bonds hereinafter referred to have already been filed and approved by the Court, and whereas, the said Natalio Peneyra has filed assignments of error both in his own name and in the name of his guardian *ad litem*,—

NOW, THEREFORE, it is hereby ordered that said appeals be and the same are hereby allowed as prayed for, and it is hereby further ordered that libellant may give one joint and several bond on appeal in the aggregate sum of \$750 to cover costs of the appeal by himself in his own person, and in accordance with his request may give one joint and several bond on appeal in the aggregate sum of \$750 to cover costs on appeal by the said guardian *ad litem*, the said bonds to be in form and conditioned as required by law and by the rules of the United States Circuit Court of Appeals for the Ninth Circuit, and it is further ordered that pending such appeals all further proceedings in the case be stayed.

(Sgd.) HORACE W. VAUGHAN,

Judge United States District Court.

Dated at Honolulu, T. H., May 24th, 1918. [211]

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Filed May 23, 1918, 4 o'clock and X minutes  
P. M. A. E. Harris, Clerk. Wm. L. Rosa, Deputy  
Clerk.

*In the District Court of the United States for the  
Territory of Hawaii.*

No. —.

IN ADMIRALTY—IN REM.

NATALIO PENEYRA, an Insane Person, by  
ADRIANO BORHA, His Guardian Ad  
Litem,

Libellant-Appellant,

vs.

The American Steamship "KINAU," Her Engines,  
Machinery, Boilers, Tackle, Apparel, Boats,  
Furniture and Appurtenances,

Libellee,

and

INTER-ISLAND STEAM NAVIGATION COM-  
PANY, LIMITED, Bailee and Claimant  
Thereof,

and

INTER-ISLAND STEAM NAVIGATION COM-  
PANY, LIMITED, a Corporation, Owner  
Thereof,

Appellees.

NATALIO PENEYRA,

Libellant-Appellant,

vs.

The American Steamship "KINAU," Her Engines,  
Machinery, Boilers, Tackle, Apparel, Boats,  
Furniture and Appurtenances,

Libellee,

and

INTER-ISLAND STEAM NAVIGATION COMPANY, LIMITED, Bailee and Claimant Thereof,

and

INTER-ISLAND STEAM NAVIGATION COMPANY, LIMITED, a Corporation, Owner Thereof,

Appellees.

### Assignment of Errors.

Now comes the above-named libellant, Natalio Peneyra, an insane person, by Adriano Borha, his guardian *ad litem*, and Natalio Peneyra, libellant-appellant in the above-entitled causes, and consolidated by an order duly made and entered up in the United States District Court, and say: [212]

That in the record and proceedings in the above-entitled cause there is manifest error, and said libellants-appellants now make, file and present the following assignment of errors upon which they will rely, as follows, to wit:

(1) The Court erred in dismissing the libel in this suit, and in taxing costs against the libellant, Natalio Peneyra, in the sum of ninety-nine and 55/100 dollars (\$99.55), because said suit was commenced and continued down to final decree by Natalio Peneyra, an insane person, by his guardian *ad litem* Adriano Borha, under an order made and entered up in said cause by the Honorable J. B. Poin-dexter, one of the judges of this court, which order was never set aside; and said suit was commenced

and prosecuted by the said Adriano Borha as such guardian *ad litem*, in *fórma pauperis* under said order of said judge.

(2) The Court erred in overruling and denying the motion made by the libellant-appellant Natalio Peneyra, an insane person, by Adriano Borha, his guardian *ad litem*, libellant-appellant, to set aside the oral decision rendered in that suit and to strike from the record the statement of Natalio Peneyra made to the presiding Judge on said hearing, Honorable Horace W. Vaughan.

(3) The Court erred in finding that upon the evidence, facts and circumstances appearing on the hearing of said cause, that the injuries to the libellant-appellant were not caused by any negligence, or failure of duty on the part of the libellee-appellee, and that the libellant-appellant was not entitled to recover any damages by reason thereof.

(4) The Court erred in finding for the libellee and against the libellant. [213]

(5) The Court erred in finding and holding that the libellee and the claimant and owner of the steamship "Kinau" did not violate the marine contract entered into between the libellant and the master and agent of said steamship, as set out in the libel filed in this suit, and that libellant was not entitled to recover any damages for the breach or breaches of said marine contract entered into between the libellant and the master and agents of said steamship.

(6) The Court erred in finding and holding under the evidence adduced on the hearing in this suit that the marine contract entered into between the libel-



lant and the master, agent and owner of said steamship "Kinau" had not been violated, as alleged and set out in the libel filed in this suit; and that the evidence and the preponderance of evidence in this suit did not establish that there was a violation of said marine contract on the part of the master, agent and owner of said steamship, nor of any obligation, or duty arising therefrom, and that the libellant-appellant was not entitled to recover any damages by reason or on account thereof.

(7) The Court erred in denying the libellant's motion to set aside the oral decision rendered in this suit and to strike from the record the statement of Natalio Peneyra, and for further relief in admiralty upon the grounds and for the reasons relied upon in support of said motion.

(8) The Court erred in receiving the statement of Natalio Peneyra two days after he had been discharged from the insane asylum as to how and under what circumstances he sustained the injuries on board the steamship "Kinau," where he was received as a passenger in the quarters set aside for second-class passengers on the 19th day of December, A. D. 1917; that the said Natalio Peneyra was not a competent witness under the circumstances disclosed in this case, and said statement, [214] even if made under oath, was not evidence in the case, and could not be relied upon.

(9) The Court erred in finding and holding that there was evidence of contributory negligence on the part of the libellant-appellant, which said defense was not set up in the answer of the said owner and

claimant, and the evidence does not sustain the finding that there was contributory negligence on the part of the libellant-appellant Natalio Peneyra.

(10) The Court erred in finding that upon the facts appearing on the trial of said cause no damage had resulted to the libellant.

(11) The Court erred in finding for the libellee, claimant and owner and against the appellant.

(12) The Court erred in entering a final decree in favor of the libellee, owner and claimant, and against the libellant in this suit.

(13) The Court erred in making, rendering and entering the final decree in said suit upon the findings and records therein.

(14) The Court erred in rendering and making its decree in said suit because said decree was and is contrary to admiralty and justice, and to the evidence and the preponderance of evidence, and the facts and circumstances as stated and shown in the pleadings and records in said suit.

In order that the foregoing assignment of errors may be and appear of record, the said libellant-appellant files and presents the same to said court, and prays that such disposition on behalf thereof may be made as in accordance with law and the Statutes in the United States in such case made and provided. [215]

And said libellants-appellants pray for a reversal of the said final decree heretofore made and entered by said Court.

Dated at Honolulu, District of Hawaii, this 23d day of May, A. D. 1918.

NATALIO PENEYRA,  
An Insane Person,  
By ADRIANO BORHA,  
His Guardian *ad Litem*,  
Libellant-Appellant, and  
NATALIO PENEYRA,  
Libellant-Appellant,  
By GEORGE A. DAVIS,  
J. J. BANKS,  
His Proctors.

Service of accounting of the foregoing assignment of errors acknowledged on this 23 day of May, A. D. 1918.

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Counsel for Appellees. [216]

City and County of Honolulu,  
District and Territory of Hawaii.

Ebert J. Botts, of Honolulu, attorney at law, being first duly sworn, upon his oath deposes and says: That he is a citizen of the United States and is over the age of twenty-one years; and that on the 23d day of May, A. D. 1918, he did personally serve upon William L. Warren, Esq., at his office in the Bank of Hawaii Building, in said Honolulu, a full, true and correct copy of the foregoing assignment of errors, and the said William L. Warren is one of the attorneys and proctors of record for the libellee-appellees herein, and the said William L. Warren personally received said copy of said assignment of errors.

E. J. BOTTS.



And Under the Final Decree Filed Herein,  
NATALIO PENEYRA,

Libellant and Appellant,  
vs.

The American Steamship "KINAU," Her Engines,  
Machinery, Boilers, Tackle, Apparel, Boats,  
Furniture and Appurtenances,

Libellee,

and

INTER-ISLAND STEAM NAVIGATION COM-  
PANY, LIMITED, a Corporation, Bailee,  
Claimant and Owner of said Steamship,

Appellee.

**Assignment of Errors of Natalio Peneyra, an In-  
sane Person, by Adriano Borha, His Guardian  
Ad Litem.**

**SUIT FOR DAMAGES BY PASSENGER FOR  
BREACH OF MARINE CONTRACT BY  
CARRIER.**

Now comes the above-named Natalio Peneyra, an insane person, by Adriano Borha, his guardian *ad litem*, libellant-appellant herein, and says that in the record and proceedings in the above-entitled cause there is manifest error and said libellant-appellant who has been allowed an appeal from the decree filed herein by the said Court now makes, files and presents his separate assignment of errors as follows, and upon which he will rely, to wit: [218]

1. The Court erred in finding and holding that Natalio Peneyra, who had been adjudicated an insane person and had been committed to an Insane

Asylum but was discharged therefrom on the 11th day of May, A. D. 1918, and who appeared in court on May the 13th, A. D. 1918, had recovered and was sane upon the statement made by the said Natalio Peneyra in answer to questions put by the presiding Judge of said Court, and in which statement the said Natalio Peneyra denied that he was insane at any time, and that he was not unconscious after sustaining the injuries on board the steamship "Kinau" on the 19th of December, A. D. 1917, when all the evidence in the case as to the condition of the said Natalio Peneyra established that he was insane, had been adjudicated an insane person by a court of competent jurisdiction, had been committed to an insane asylum, which said order of adjudication was then in full force and unrevoked and the said Adriano Borha had been duly appointed his guardian by a court of competent jurisdiction as well as guardian *ad litem* in this suit, and the order appointing Adriano Borha guardian *ad litem* was made by the Honorable J. B. Poindexter, one of the Judges of the United States District Court, and no motion had been made to set it aside, and no medical examination was made upon order of the Court on the 13th of May, A. D. 1918, before finding that the said Natalio Peneyra had fully recovered his reason and was sane, and fully competent to be substituted as plaintiff in this suit in the room and place of the said guardian *ad litem*, Adriano Borha.

2. That the Court erred in finding that the said Natalio Peneyra was sane and in so declaring him sane and in ordering and directing that the said

Adriano Borha, the guardian *ad litem*, duly appointed in this suit, should be discharged as such guardian *ad litem* and the said Natalio Peneyra should be made libellant in this suit. [219]

3. The Court erred in overruling and denying the motion to set aside the oral decision rendered in this suit and to strike from the record the statement of Natalio Peneyra, and for such other and further relief in admiralty as should be granted in accordance with the pleadings filed and the proofs on the hearing made and files by Natalio Peneyra by Adriano Borha, his guardian *ad litem*, on the 20th day of May, A. D. 1918.

4. The Court erred in holding that upon the facts appearing upon the hearing of this cause the Marine Contract entered into between the libellant and the libellee on or about the 19th day of December, A. D. 1918, as set out in the libel filed herein, was not violated by the libellee or the owners of said steamship "Kinau" or its servants or agents, and that the libellant was not entitled to recover any damage for the injury sustained by the said Natalio Peneyra.

5. The Court erred in finding and holding that the claimant and owner of said steamship was not guilty of any negligence or failure of duty toward the said Natalio Peneyra who was received on board of said steamship in the steerage quarters notwithstanding that he had a first-class ticket entitling him to a first-class passage from Nawiliwili to Honolulu, and in finding and holding that the marine contract entered into between Natalio Peneyra and the owner of said steamship had not been violated and the

duties and obligations arising from said marine contract had not been broken, and that the said libellant was not entitled to any damages for the injury sustained on board of said steamship.

6. The Court erred in holding and finding that it was through no fault or negligence of the servants or agents of the steamship [220] "Kinau," or the servants or agents of the owners of said steamship, that the libellant sustained the injuries set out in the libel filed in this suit and was not entitled to any damages for said injury so sustained by the said Natalio Peneyra on the 19th of December, 1918, on board said steamship "Kinau."

7. The Court erred in finding that upon the facts appearing on the hearing of said cause no damage had resulted to the libellant.

8. The Court erred in finding for the libellee, claimant and owner of said steamship and against the libellant.

9. The Court erred in dismissing the libel in this suit and in taxing costs in the sum of \$99.55 against the libellant.

10. The Court erred in finding and holding in favor of the libellee and claimant and against the libellant under the evidence adduced on the trial of this suit, the preponderance of the evidence and the great weight of the evidence adduced establishing that the marine contract entered into between the libellant and the owners of said steamship "Kinau" to receive the libellant on board the said steamship safely and without injury was violated and there was a breach and breaches of said contract by the



owners of said steamship, their servants and agents as well as a failure of duty entitling the libellant to recover substantial damages therefor.

11. The Court erred in giving weight to the statement of Natalio Peneyra made in court after the case had been closed and disregarding all the other evidence in the case and finding in favor of the libellee, claimant and owner of said steamship "Kinau," and in dismissing the libel filed in this suit.

12. The Court erred in entering a final decree in favor of the libellee, claimant and owner in this suit.

13. The Court erred in making, rendering and entering the final decree in this suit upon the findings and records therein. [221]

14. The Court erred in rendering and making its decree in said suit because said decree was and is contrary to law and admiralty and to the facts as disclosed by the evidence adduced on the hearing and shown in the pleadings and records in said suit.

In order that the foregoing assignment of errors may be and appear of record, the said libellant appellant files and presents the same to said Court and prays that such disposition on behalf thereof may be made as in accordance with law and the statutes of the United States in such case made and provided, and said libellant-appellant Natalio Peneyra, an insane person, by his guardian *ad litem*, Adriano Borha, prays a reversal of the said final decree heretofore made and entered by said Court.

Dated at Honolulu, District of Hawaii, the 24th day of May, A. D. 1918.

NATALIO PENEYRA,  
 An Insane Person,  
 By ANDRIANO BORHA,  
 His Guardian *ad Litem*,  
 By GEO. A. DAVIS,  
 J. J. BANKS,  
 His Proctors. [222]

City and County of Honolulu,  
 District and Territory of Hawaii,—ss.

Ebert J. Botts, being first duly sworn, deposes and says: That he is an attorney at law and a resident of the city and county of Honolulu, Territory of Hawaii; that on the 25th day of May, A. D. 1918, he did serve William L. Warren, one of the proctors and attorneys of the libellee-appellee herein, with a true and correct copy of the assignment of errors herein, by leaving with the said William L. Warren personally a true and correct copy thereof, at his office in said Honolulu, and the said William L. Warren personally received said copy.

E. J. BOTTS.

Subscribed and sworn to before me this 25 day of May, A. D. 1918.

[Seal]

GEO. S. CURRY,  
 Notary Public, First Judicial Circuit, Territory of  
 Hawaii. [222 (a)]

Filed May 24, 1918. A. E. Harris, Clerk. Wm.  
L. Rosa, Deputy Clerk.

*In the District Court of the United States, for the  
Territory of Hawaii.*

No. —

IN ADMIRALTY—IN REM.

NATALIO PENEYRA, an Insane Person, by  
ADRIANO BORHA, His Guardian Ad  
Litem,

Libellant-Appellant.

vs.

The American Steamship "KINAU," Her Engines,  
Machinery, Boilers, Tackle, Apparel, Boats,  
Furniture and Appurtenances,

Libellee,

and

INTER-ISLAND STEAM NAVIGATION COM-  
PANY, LIMITED, a Corporation, Bailee,  
Claimant and Owner of Said Steamship,

Appellee,

And Under the Final Decree Filed Herein,

NATALIO PENEYRA,

Libellant and Appellant,

vs.

The American Steamship "KINAU," Her En-  
gines, Machinery, Boilers, Tackle, Apparel,  
Boats, Furniture and Appurtenances,

Libellee,

and

INTER-ISLAND STEAM NAVIGATION COMPANY, LIMITED, a Corporation, Bailee, Claimant and Owner of Said Steamship, Appellee.

**Assignment of Errors of Natalio Peneyra.**

**SUIT FOR DAMAGES BY PASSENGER FOR BREACH OF MARINE CONTRACT BY CARRIER.**

Now comes the above-named Natalio Peneyra, who was made libellant in this suit in his own person by decree of the United States District Court made and filed on the 23d day of May, A. D. 1918, and who has been allowed to appeal from said decree by the said Court, and as appellant herein under said order of said Court, now makes, files and presents his separate assignment of errors [223] as follows, and upon which he will rely, to wit:

1. The Court erred in dismissing the libel filed in this suit.
2. The Court erred in finding and holding that under the evidence adduced on the hearing in this suit commenced by his guardian *ad litem*, that there was no breach of the marine contract entered into between the said Natalio Peneyra and the owners of said steamship "Kinau" on the 19th of December, A. D. 1917, nor any violation of duty by the servants or agents of the claimant and owner of said steamship in receiving this appellant on board said steamship as alleged in the libel filed herein, and in finding and holding that said appellant was not entitled

to recover any damages for the injury sustained by him as set out in the libel filed herein.

3. The Court erred in finding that upon the evidence adduced on the trial of said cause no damage had resulted to this libellant and appellant.

4. The Court erred in finding for the libellee, claimant and owner and against the libellant appellant, Natalio Peneyra.

5. The Court erred in finding and holding that there was no negligence or failure of duty on the part of the claimant and owner of said steamship "Kinau" or of any of its servants or agents which entitled this libellant and appellant to recover damages.

6. The Court erred in finding and holding that the injury sustained by this libellant and appellant was by and through the contributory negligence of this libellant and appellant, and that he was not entitled to recover for the injury sustained by him on board the said Steamship "Kinau" on the 19th of December, A. D. 1917.

7. The Court erred in finding and holding that the injuries sustained by this libellant and appellant was by and through the contributory [224] negligence of the said Natalio Peneyra, this libellant and appellant, and especially when the defense of contributory negligence was not set up in the answer of the owner and claimant of said steamship nor relied on as a defense in this suit by said owner and claimant, and because there was and is no evidence of contributory negligence on the part of the said Natalio Peneyra, this libellant-appellant, which would bar

his recovery of damages in this suit.

8. The Court erred in finding and holding under the evidence adduced in this suit that the said libellant-appellant was not entitled to recover any damages for the injuries sustained by him and as set out in the libel filed herein, because there was no failure of duty or negligence on the part of the claimant and owner of said steamship "Kinau," or its servants or agents, and in dismissing the libel filed herein.

9. The Court erred in entering a final decree against the libellant-appellant and in favor of the libellee, claimant and owner of said steamship "Kinau" in this suit.

10. The Court erred in finding and holding in favor of the libellee and against the libellant-appellant, because said holding and finding was and is contrary to the evidence, the weight of the evidence and because all the material allegations of the libel were fully proven and no reason or facts are shown by the evidence to warrant such finding.

11. The Court erred in making, rendering and entering the final decree in said suit upon the findings and records therein.

12. The Court erred in rendering and making its decree in said suit because said decree was and is contrary to all the [225] evidence adduced in this suit, the preponderance of the evidence and the weight of the evidence and is contrary to law, admiralty and justice, and to the facts and circumstances as stated and shown in the pleadings and records in said suit.

In order that the foregoing assignment of errors

may be and appear of record, the said libellant-appellant files and presents the same to the said Court and prays that such disposition on behalf thereof may be made as in accordance with law and the statutes of the United States in such case made and provided, and said libellant-appellant Natalio Peneyra prays a reversal of the said final decree heretofore made and entered by said Court.

Dated at Honolulu, District of Hawaii, this 24th day of May, A. D. 1918.

NATALIO PENEYRA,  
By GEO. A. DAVIS,  
J. J. BANKS,  
His Proctors. [226]

City and County of Honolulu,  
District and Territory of Hawaii,—ss.

Ebert J. Botts, being first duly sworn, deposes and says: That he is an attorney at law and a resident of Honolulu, city and county of Honolulu, Territory of Hawaii; that on the 25th day of May, A. D. 1918, he did serve William L. Warren, one of the proctors and attorneys of the libellee-appellee herein, with a true and correct copy of the assignment of errors herein, by leaving with the said William L. Warren personally a true and correct copy thereof, at his office in said Honolulu, and the said William L. Warren personally received said copy.

E. J. BOTTS.

Subscribed and sworn to before me this 25 day of  
May, A. D. 1918.

[Seal] GEO. S. CURRY,  
Notary Public, First Judicial Circuit, Territory of  
Hawaii. [227]

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Filed May 24, 1918. A. E. Harris, Clerk. By  
(Sgd.) Wm. L. Rosa, Deputy Clerk.

*In the District Court of the United States, for the  
Territory of Hawaii.*

No. 172.

IN ADMIRALTY—IN REM.

NATALIO PENEYRA, an Insane Person, by  
ADRIANO BORHA, His Guardian Ad  
Litem,

Libellant-Appellant,

vs.

The American Steamship "KINAU," Her Engines,  
Machinery, Boilers, Tackle, Apparel, Boats,  
Furniture and Appurtenances,

Libellee,

and

INTER-ISLAND STEAM NAVIGATION COM-  
PANY, LIMITED, a Corporation, Owner  
Thereof,

Appellees.



Citation on Appeal.

SUIT FOR DAMAGES BY PASSENGER FOR  
BREACH OF MARINE CONTRACT BY  
CARRIER.

United States of America,  
District of Hawaii,—ss.

The President of the United States, to the American Steamship "Kinau," Her Engines, Machinery, Boilers, Tackle, Apparel, Boats, Furniture, and Appurtenances, and to Inter-Island Steam Navigation Company, Limited, Bailee, Claimant and Owner Thereof, and Inter-Island Steam Navigation Company, Limited, Owner Thereof, and to Messrs. Smith, Warren & Whitney, Its Proctors,  
GREETING.

You, it and each of you, are hereby cited and admonished to be and appear before the United States Circuit Court of Appeals for the Ninth Circuit to be held at the city of San Francisco in the State of California, within thirty (30) days from the date of this citation, pursuant to an appeal filed in the office of the [228] United States District Court for the Territory of Hawaii, in the above-entitled proceeding, wherein Natalio Peneyra, an insane person, by Adriano Borha, his guardian *ad litem*, is libellant-appellant, and under the decree filed herein Natalio Peneyra is libellant-appellant, and you, the respective libellee-appellees, do then and there show cause, if any there be, why the decree entered in the above-entitled proceeding on the 23d day of May, A. D. 1918, in said appeal mentioned and thereby appealed from

should not be corrected and reversed, and why speedy justice should not be done to the parties in that behalf.

WITNESS the Honorable EDWARD DOUGLASS WHITE, Chief Justice of the United States of America, this 24th day of May, A. D. 1918.

[Seal] (Sgd.) HORACE W. VAUGHAN,  
Judge of the United States District Court for the  
Territory of Hawaii. [229]

District of Hawaii,  
Territory of Hawaii,  
City and County of Honolulu,—ss.

George A. Davis, of Honolulu, in the District and Territory of Hawaii, attorney at law, upon being duly sworn, upon his oath deposes and says: That he is one of the proctors for the libellant in the within entitled cause, and that on Friday, the 24th day of May, A. D. 1918, he did personally serve M. M. Graham, the secretary and an officer of the Inter-Island Steam Navigation Company, Limited, owner and claimant of the American Steamship "Kinau," and the appellee in said suit with the annexed citation, and the order allowing the appeal of said cause by delivering to him, the said M. M. Graham, as such secretary and officer of said corporation, and at the office of said corporation, a full, true and correct copy of the said citation issued in the said suit, and a full, true and correct copy of the order allowing said appeal, to the United States Circuit Court of Appeals of the Ninth Circuit, and at the time of said service I exhibited to him, the said M. M. Graham, the said

secretary and officer of said corporation, the original citation issued on appeal in this suit, and further this deponent saith not.

(Sgd.) GEO. A. DAVIS.

Subscribed and sworn to at said Honolulu on this 24th day of May, A. D. 1918.

[Seal] (Sgd.) E. J. BOTTS,  
Notary Public, First Judicial Circuit, Territory of  
Hawaii. [230]

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Filed July 20, 1918. A. E. Harris, Clerk. By  
(Sgd.) Wm. L. Rosa, Deputy Clerk.

*In the District Court of the United States, for the  
Territory of Hawaii.*

No. 172.

IN ADMIRALTY—IN REM.

NATALIO PENEYRA, an Insane Person, by  
ADRIANO BORHA, His Guardian Ad  
Litem,

Libellant-Appellant,

vs.

The American Steamship "KINAU," Her Engines,  
Machinery, Boilers, Tackle, Apparel, Boats,  
Furniture and Appurtenances,

Libellee,

and

INTER-ISLAND STEAM NAVIGATION COM-  
PANY, LIMITED, a Corporation, Owner  
Thereof,

Appellee.

**Stipulation Re Transcript of Testimony.**

IT IS HEREBY STIPULATED: That inasmuch as no copy was made of the transcript of testimony in this cause, the original of said transcript of testimony may be included and made a part of the record on appeal in this cause and forwarded to the Clerk of the Circuit Court of Appeals for the Ninth Judicial Circuit, and that said original transcript of testimony be returned to the office of the clerk of the United States District Court for the District and Territory of Hawaii after the record on appeal herein shall have been officially filed with the clerk of the Circuit Court of Appeals for the Ninth Judicial Circuit.

Dated at Honolulu, Hawaii, July 25, 1918.

(Sgd.) GEO. A. DAVIS,

Proctor for Libellant-Appellant.

Stipulation approved.

(Sgd.) HORACE W. VAUGHAN,

Judge.

(Sgd.) SMITH, WARREN & WHITNEY,

Proctors for the Appellee. [231]

*In the District Court of the United States, for the  
Territory of Hawaii.*

No. 172.

IN ADMIRALTY—IN REM.

NATALIO PENEYRA, an Insane Person, by  
ADRIANO BORHA, His Guardian Ad  
Litem,

Libellant-Appellant,

vs.

The American Steamship "KINAU," Her En-  
gines, Machinery, Boilers, Tackle, Apparel,  
Boats, Furniture and Appurtenances,

Libellee,

and

INTER-ISLAND STEAM NAVIGATION COM-  
PANY, LIMITED, a Corporation, Owner  
Thereof,

Appellees.

**Praeceptum for Transcript.**

To the Clerk of the Above-entitled Court:

You will please prepare transcript of the record  
in this cause, to be filed in the office of the clerk of the  
United States Circuit Court of Appeals for the Ninth  
Judicial Circuit, and include in said transcript the  
following pleadings, proceedings and papers on file,  
to wit:

1. Libellant's Libel.

1. (a) Statement Under Admiralty Rule 4.

2. Answer of Claimant.

2. (a) Certificate to Statement Under Admiralty Rule 4.
3. Libellant's Exhibit "A."
4. Libellee's Exhibit "1."
5. Testimony of Anatalio Peneyra.
6. Opinion of Court.
7. Decree.
8. Notice of Appeal.
9. Notice of Appeal.
10. Bond on Appeal.
11. Bond on Appeal.
  11. (a) Orders Extending Time to Transmit Record on Appeal. [232]
12. Order Allowing Appeal.
13. Assignment of Errors.
14. Assignment of Errors.
  14. (a) Assignment of Errors.
15. Citation on Appeal.
16. Transcript of Testimony.
  16. (a) Certificate of Clerk to Transcript of Record.
17. This Praeceptum.
  17. (a) Stipulation.

Said transcript to be prepared as required by law and the rules of this court, and the rules of the United States Circuit Court of Appeals for the Ninth Circuit, and filed in the office of the clerk of said Circuit Court of Appeals at San Francisco, before the 24th day of June, A. D. 1918.

(Sgd.) GEO. A. DAVIS. [233]

*In the United States District Court, in and for the  
District and Territory of Hawaii.*

No. 172.

NATALIO PENEYRA, etc.,

Libellant,

vs.

The American Steamship "KINAU," Her Engines,  
etc.,

Libellee.

**Certificate of Clerk U. S. District Court to Apostles  
on Appeal.**

I, A. E. Harris, Clerk of the United States District Court for the District and Territory of Hawaii, do hereby certify that the foregoing pages, numbered from 1 to 234, inclusive, is a true and complete transcript of the record and proceedings had in said court in the above-entitled cause, asked for in the praecipe for transcript by the libellant, as the same remains of record and on file in my office, and I do further certify that I hereto annex the original assignment of errors and two orders extending time to transmit record on appeal.

I further certify that the cost of the foregoing transcript of record is \$17.10 and that said amount has been paid to me by the appellants.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of this court, this 25th day of July, A. D. 1918.

A. E. HARRIS,

Clerk U. S. District Court, Territory of Hawaii.

[Endorsed]: No. 3194. United States Circuit Court of Appeals for the Ninth Circuit. Natalio Peneyra and Natalio Peneyra, an Insane Person, by Adriano Borha, His Guardian Ad Litem, Appellant, vs. The American Steamship "Kinau," Her Engines, Machinery, Boilers, Tackle, Apparel, Boats, Furniture and Appurtenances, and Inter-Island Steam Navigation Company, Limited, Bailee, Claimant and Owner Thereof, Appellees. Apostles on Appeal. Upon Appeals from the United States District Court for the Territory of Hawaii.

Filed August 6, 1918.

F. D. MONCKTON,  
Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

By Paul P. O'Brien,  
Deputy Clerk.